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INVESTIGATION OF CONCENTRATION OF ECONOMIC POWER

TEMPORARY NATIONAL ECONOMIC COMMITTEE

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AND DIRECTING A SELECT COMMITTEE TO MAKE A
FULL AND COMPLETE STUDY AND INVESTIGATION
WITH RESPECT TO THE CONCENTRATION OF ECONOMIC
POWER IN, AND FINANCIAL CONTROL OVER,
PRODUCTION AND DISTRIBUTION
OF GOODS AND SERVICES

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REGULATION OF ECONOMIC ACTIVITIES IN FOREIGN COUNTRIES

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MONOGRAPH No. 40

REGULATION OF ECONOMIC ACTIVITIES IN FOREIGN COUNTRIES

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The Temporary National Economic Committee is greatly indebted to these authors for this contribution to the literature of the subject under review.

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(Signed) JOSEPH C. O'MAHONEY,
Chairman, Temporary National Economic Committee.

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LETTER OF TRANSMITTAL

HON. JOSEPH C. O'MAHONEY,
Chairman, Temporary National Economic Committee,
Washington, D. C.

MY DEAR SENATOR: It gives me pleasure to submit herewith Monograph No. 40, "Regulation of Economic Activities in Foreign Countries."

The value of this material to the committee rests in its collection of data and appraisal of plans in effect in other countries, which have as their purpose the regulation of the national economies.

While it is obvious that such plans are not immediately or entirely useful in the American economic scene, the problems of regulation are so difficult and involved that any light thrown on them through experience in different circumstances is of great value.

The present monograph is a collection of reports made by economists in various Government agencies, who are specialists in their field. Dr. Louis Domeratsky, Chief, Division of Regional Information, Bureau of Foreign and Domestic Commerce, has written part I, dealing with Recent Trends in British Industrial Reorganization. Dr. Rudolf Callmann is responsible for the first chapter of part II dealing with the History of the Extent and Control of Concentration of Economic Power in Germany. Dr. Callmann is an internationally recognized authority on cartel problems. For the 10-year period just prior to 1936, when he was attracted to the United States, he was Rechtsanwalt am Landgericht in Cologne, Germany, engaged in legal consulting practice for a variety of German cartels. He is at present attorney and consulting economist on cartel problems and resides in the United States.

Dr. John Cover, Chief Economic Analyst, and Mr. Nelson A. Miller, Acting Chief, Marketing Research Division, Bureau of Foreign and Domestic Commerce, are responsible for the collection of basic materials and reports upon which most of the rest of the monograph has been constructed.

When the material came to the T. N. E. C. it was in the form of memoranda and reports, quite unsuited for publication as a monograph. Dr. Agnes Roman was employed as an economist of the T. N. E. C. to assemble the data, fill in many gaps, and rewrite the material into a connected account. She has been very exacting and thorough in her work. She has brought to the task a long experience and training in Europe, the Orient, and the United States. She is a former Brookings Institution Research Fellow and has had substantial training in the fields under review. To her must go most of the credit for having brought this volume to completion.

The timeliness of the topic should commend Monograph 40 to all public officials and economists concerned with attempts to regulate our own economy. It should be of especial interest in shaping Government policy with respect to hemispheric influence, as it brings together hitherto unassembled data concerning South American countries.

Even though the greatest commendation is made Dr. Roman for her able work in assembling the material for this monograph, it could not have been done without the very fine cooperation furnished by other Government agencies. In this connection special credit should go to Miss Ellen L. Love, Chief of the Export Trade Section, Federal Trade Commission; to members of the Bureau of Foreign and Domestic Commerce and Office of Foreign Agricultural Relations, Department of Agriculture; to the State Department, the Department of Commerce, and to the Pan American Union, which generously offered valuable information and material for study. The wholehearted cooperation of these agencies attested not only their interest in the topic under review but their recognition of the serious purposes and solid work of the T. N. E. C.

Very respectfully,

THEODORE J. KREPS,
Economic Adviser.

DECEMBER 23, 1940.

PART I

**RECENT TRENDS IN BRITISH INDUSTRIAL
REORGANIZATION**

by

LOUIS DOMERATSKY

Chief, Division of Regional Information
Bureau of Foreign and Domestic Commerce

FOREWORD

The social and economic experience of Great Britain has been and is of particular significance to the United States. It is specially relevant because the basic frameworks of law and social and political philosophy in the two countries have been so closely related. The British record has preceded that of the United States in the processes of economic evolution, approaching earlier a state of so-called economic maturity, with its difficult problems of making adjustments without the aid of a strong underlying upward trend of expansion. In spite of the cautions which must accompany any comparison between two different countries, this time-lag provides us with an opportunity to gain some light on possible policies and programs for us in terms of their actuality in Great Britain.

The British approach toward industrial combinations has always differed from our own. Her traditional policy was one of thorough laissez faire, of government disregard of the problem. However, this attitude and the general philosophy which underlay it, has been virtually abandoned under the impact of economic changes and problems stemming back to the World War. Not only has economic concentration been openly encouraged in recent years, but the necessity of positive government intervention in economic affairs has been generally accepted.

This brief essay concerns itself primarily with the post-war problems of the coal and cotton industries, and the programs which have emerged from years of investigation and discussion. Not only are these two industries of immense importance to the British economy, but the normal individualistic processes seem to have failed completely to accomplish the necessary adjustments to the changed post-war conditions. Even collective action on the part of the industries themselves proved inadequate, and the British Government found it necessary to intervene and finally to exercise its authority in establishing a program. The record is presented not as a controlling precedent, but because such specific results of prolonged consideration of the processes of economic adjustment by British industrialists and statesmen cannot help but be of benefit to our own thinking.

WILLARD L. THORP.

WASHINGTON, D. C., *March 1, 1940.*

INTRODUCTION

The problems of economic concentration and industrial stabilization have become very acute since the World War in most of the industrial countries of the world. The methods and policies applied by foreign countries to the solution of such problems have, therefore, received considerable attention, particularly those originating in the totalitarian countries. In analyzing them it is found that while in some cases they may prove more or less effective in their particular economic and political environment, they involve a degree of political and economic regimentation and a subordination of the national economy to the State that makes them of little value as an aid in the solution of our own economic problems. We can hardly look for light from countries whose economic resources are used primarily for building up the military strength, where in some cases more than half of the national income is used for such purposes and where the consumption needs of the individual citizens are curtailed as much as possible so as to leave a greater share for the carrying out of political objectives. Under such conditions, the unemployment problem is solved by military mobilization, the spreading of work, and the assignment of a part of the working population to more or less compulsory labor. Economic concentration is not only encouraged, but in many cases forced by the State to bring about a more efficient supply of the military needs. The problems of inflation are solved temporarily by a freezing of wages and prices, and the excessive military expenditures are met by more or less compulsory loans and the issue of paper currency. Whatever justification there may be for such measures in a national emergency, it is quite obvious that they do not offer a basis for a policy in a country that is trying to solve the economic problems within the framework of democratic institutions, and without an excessive impairment of its basic economic structure based primarily on private initiative.

On the other hand, the policies and methods of a country like England may prove of considerable value, as they represent the efforts of a democratic country to solve more or less the same problems that are confronting us. While the British policy involves a recognition of the value of industrial combinations inconsistent with our own antitrust legislation, they are of considerable interest in view of our own experience with the N. R. A. and in the light of the problems presented to the Temporary National Economic Committee. In spite of the differences in scope and background, the economies of the United States and England present some basic similarities. This applies particularly to the attitude toward private initiative and the traditional relations between business and government. It is therefore believed that a study of some of the methods applied by the British Government and business to the solution of some of the economic problems created or intensified by the World War should be included among the reports of the Temporary National Economic Committee.

The present study deals only with the British methods used in reorganizing two of the British staple industries—coal and cotton—

whose problems have been unusually difficult during the post-war period. The methods proposed for the reorganization of the cotton industry are of particular significance, as it was generally believed that they were to be used as a guide for the future policy in dealing with other industries in need of reorganization. In addition to a detailed account of the measures dealing with the coal and cotton industries, the study also includes an introductory chapter dealing with the British post-war economic problems in general with a view to furnishing a background for the policies applied to the specific industries.

This study was completed in August 1939, after the enactment of the cotton industry (reorganization) bill and, therefore, does not deal with the methods applied to British industry under war conditions. As was to be expected, the pressing demands of the war have made it necessary for the British Government to adopt some very drastic measures of control over the various phases of British economy in order to assure a full utilization of the economic resources of the country in carrying out the military objectives. Under the circumstances, the policies adopted to reorganize British industries so as to adjust them to the new normal conditions created by the World War had to be laid aside for the duration of the present war.

It is obviously too early to appraise the ultimate effects of the present war on British economy or British economic policies. The first impact of the war indicates a decided trend toward Government control, which has culminated in the Emergency Powers Defense Acts of 1939-40, passed on May 22, 1940, enlarging to an extraordinary degree the powers conferred by the Emergency Powers Defense Act of 1939. The comprehensive character of the new powers is shown by the wording of section 1:

SECTION 1. (1) Powers conferred upon the King by the 1939 Emergency Powers Defense Act (hereinafter called the principal act) shall notwithstanding anything in that act include power by order in council to make such defense regulations, making the provision requiring persons to place themselves, their services, and their property at the disposal of His Majesty as may appear to him necessary and expedient for securing the public safety, defense of the realm, maintenance of public order, or efficient prosecution of any war wherein His Majesty may be engaged, or for maintaining supplies essential to the life of the community.

While it may be assumed that some of the more drastic controls will not be retained after the war, it is hardly to be expected that the ultimate post-war trend will involve a curtailment of the degree of government intervention attained prior to the outbreak of the present war. The whole international economic trend would seem to point in the opposite direction.

BRITISH PROBLEMS OF ECONOMIC REORGANIZATION

The fundamental changes in British economy following the World War, while not as dramatic as those which have taken place in the economies of Soviet Russia and Germany, have been sufficiently pronounced to require a complete overhauling of British economic policy, involving a process of painful adjustment to an international economic environment in which England has lost many of the advantages responsible for her economic supremacy in the pre-war world. This process is still going on, greatly influenced not only by the shifting economic trends and policies in the other countries, but

also by political disturbances which impose the additional task of readjusting British industry to the needs of national defense as well as to those of supplying the protected domestic market and the more or less protected Empire market.

In her efforts to make the tremendous economic adjustments, England has found it necessary to change her traditional economic policies. In addition to the abandonment of free trade, with all its implications as regards free movement of capital and open door in the Empire, there has developed a new attitude toward State intervention in economic affairs. This new attitude is reflected in the various forms of assistance to agriculture and industry as well as in the position of the British Government on economic concentration, which has changed from laissez-faire to open encouragement and, in some cases, even to compulsion.

Economic concentration is not an outgrowth of post-war British economic policy. In spite of the formidable obstacles presented by free trade, abundance of capital and national resources, and the strongly developed sense of economic individualism, strong amalgamations were found in some of the British industries long before the World War. In addition to the permanent amalgamations, we also find during the same period many trade associations with the openly avowed purpose of fixing prices or controlling production, toward which the Government assumed a laissez-faire attitude. It is true that the World War and the post-war economic and political developments have considerably accelerated this movement, but even before the war price fixing and production control through trade associations seemed to the British industrialist as a perfectly rational method for preventing cut-throat competition. The Government's solicitude for the consumer or the industrialist outside the trade association was restricted to withholding from the trade associations the privilege of recourse to law for the enforcement of its restrictions; the consumer was expected to rely for his protection on the foreign competition encouraged by the free trade policy. That this was not always the case, and that the progress of combinations and various other forms of restrictions on competition had become a matter of considerable concern to the Government, is evidenced by the following extracts from the well-known report of the committee on trusts, appointed in February 1918:

British trade organization.—The last twenty years have accordingly seen a steady transition from competition to combination in all the leading industrial nations. The movement has accommodated itself to national conditions and characteristics. In Germany and the United States it has culminated in the Kartell and the Trust, each in its way emblematic of the national character. In this country great consolidations have hitherto been less formidable than in America, and associations of independent manufacturers have in no single case been developed to anything like the same logical outcome as in Germany. Yet it should not be too readily assumed that British industries lag far behind those of other countries in effectiveness of internal organisation. Individuality has counted for more in British manufacture than in foreign, and if amalgamation has proceeded cautiously there has been reason in the caution. British combines and consolidations may not rank as prodigies, but among them are some that can vie in efficiency with any in the world. British trade associations make little parade of their existence or achievements, but there are few corners of British industry in which some kind of trade association is not to be found, and some of them can show a thoroughness of organisation not easily surpassed. What is notable among British consolidations and associations is not their rarity or weakness so much as their unobtrusiveness. There is not much display in the window, but there is a good selection inside (p. 17 of report).

The combine.—A more advanced type of combination is that commonly known as the "combine." In the combine a number of previously financially separate firms engaged in one line of business, enter into an arrangement whereby they become financially and commercially interconnected under some form of central organisation. The component firms may continue to be separate registered companies; or they may, while carrying on business as separate concerns, be in fact financially merged in one holding company. In either case the former proprietors of the merged businesses hold shares in the combine, and may also have a bonus on the earnings of their former businesses which remain under their direction subject to financial and other control by the combine. In combines of the more loosely connected type the buying and selling may remain wholly or partly in the hands of the component firms, but in the more compact combines the whole of the business is done by the central organisation and the separate establishments work entirely to the orders of the central office. Combinations of the "combine" type in the United Kingdom are found mainly in the textile industries (bleaching, dyeing, and spinning) and in the wallpaper and cement industries (p. 18 of report).

Legal status of associations.—By Section 16 of the Trade Union Act, 1876, any combination for imposing restrictive conditions on the conduct of any trade or business is a trade union, and the courts will not entertain any legal proceeding instituted with the object of directly enforcing or recovering damages for the breach of any of the following agreements: (1) Any agreement between members as such, concerning the conditions on which any members for the time being shall or shall not sell their goods, transact business, employ or be employed; (2) any agreement for the payment by any person of any subscription or penalty; (3) any agreement for the application of funds; (4) any agreement made between one trade union and another; or (5) any bond to secure the performance of any of the above-mentioned agreements. The trade associations here under discussion, being wholly or partly concerned with the regulation of prices or output by the restriction of competition, come under the above definition, and are under the disabilities mentioned. Membership in the association is not unlawful, neither is the making of the above-named agreements, but such agreements cannot be enforced in a court of law. Associations are precluded from registering under the Companies Acts or the Partnership Acts, but they may, and the majority do, register as trade unions. They thereby enjoy the immunities of trade unions, but their position is precarious in that any member may break away and re-enter into competition whenever he chooses, or flagrantly break the rules to which he has subscribed, and their activities are circumscribed by their being able to pursue only certain objects as prescribed by statute. One method of overcoming these disabilities has been found in the formation of "a properly constituted limited liability company for the investment of all moneys received from the members," having as one of its articles of association a provision that the company may by a three-fourths majority vote of its members determine that the shares of any member may be sold by the company to the other members at a nominal price. Registration under the Companies Acts was obtained in 1912 for a limited liability company having such a provision as one of its articles, and in 1916 the company went through the test of the courts up to the Court of Appeal, and was there pronounced a legal association (p. 18 of report).

PRE-WAR ECONOMIC STRUCTURE

In order to present the post-war attempts at economic reorganization in their proper relationship, it might be desirable to sketch briefly the main characteristics of British economic structure at the turn of the century.

Agriculture had been losing steadily, and by 1911 the whole agricultural group made up only about 8 percent of the occupied population of the country.¹ This percentage should be considered from the standpoint of comparison, with industry in the light of the fact that the proportion of employers is far greater in agriculture than in industry.

¹ John Harold Clapham, *An Economic History of Modern Britain*, Macmillan, London, 1938, vol. III, p. 1.

According to the First Census of Production of 1907, Great Britain shipped abroad about 30 percent of the total value of its national production—showing a dependence on foreign trade at least three times as great as that of the United States.

Disturbing phenomena of foreign competition at home and in foreign markets were beginning to appear in the eighties of the last century. In the early part of the present century the growing threat to the traditional British economic supremacy from the newer industrial countries was becoming quite obvious, even before the development of Japan as a formidable factor in the cotton markets of the Far East—Britain's more or less exclusive domain—and the enormous development of American industrial productivity and competitive capacity during the war. But the British international economic position was still not only paramount, but based solidly on the tremendous force of British capital, shipping, lending policy, and enormous demands for foodstuffs and raw materials.

It was the period when British capital was still flowing freely into the undeveloped parts of the globe, when the exploitation of the world's natural resources was considered the most urgent task, and when the development of the dominions was not affected by the worry about possible competition of their products in the British market. World surpluses of commodities were unheard of and no country found it necessary to prohibit imports so as not to spend too much, or because it wanted to become self-sufficient, or to direct trade into channels where barter could replace exchange. It was also a period when the world, in spite of occasional agitation in agrarian countries, still thoroughly believed in the gold standard and when the increasing flow of gold from the Transvaal mines, exploited with the aid of British capital, was gradually allaying the monetary disturbances created by the downward trend of prices. An abundant supply of foodstuffs and raw materials was the basis of British industrial supremacy, and the flow of British capital was one of the strongest factors in maintaining that supply, as well as providing export markets for British capital goods. England's economic interests were so widespread that a disturbance in one part of the world was likely to be compensated by a more favorable factor in another.

While the proportion of reinvestment of yields from old markets was getting smaller during the last decade of the last century, the yields from old investments and services were sufficient to finance a very considerable excess of imports, although there were always some fears expressed that England was beginning to live on her capital—fears which became very strong during the post-war period.

The rise of two of the three main industrial rivals of England was beginning to disturb seriously British public opinion. While it was realized that for a time at least the increase in American productivity was going mainly to supply the rapidly growing domestic demand, there were many disturbing phenomena, such as the increase in the proportion of manufactures in United States' exports, and the rise of the woolen, tin plate, and machinery industries, which foreshadowed a decline of the British exports to the United States. American inventive genius in industrial equipment was also beginning to exert an accelerating influence on the industrial tempo of the world, including England, and the "American invasion" was receiving more than its deserved publicity. The rise of industrial and commercial Germany made a much stronger impression, probably because of the lower

capacity of the domestic market and consequently greater pressures in export markets in competition with England, especially since Germany and, to some extent, Japan, were beginning to specialize in supplying the colonial markets with cheap goods, far below the standard of quality, but better adapted to the colonial purchasing capacity, than the British goods. It was fully realized that Germany was making much more rapid progress than England, and the much advertised efficiency and scientific achievements of the former were giving rise to the fear that England was getting too old to keep up with the procession.

In its industrial structure, England at the beginning of the century manifested few deviations from the traditional pattern formed during the period of British industrial supremacy, as will be seen from the following tables:

TABLE 1.—*The output of the United Kingdom taken as a whole*

[The chief particulars furnished to the Census of Production Office respecting the industries of the United Kingdom are summarized in the following statement, in which the information is classified by groups of allied trades]

Group of Trades	Gross output, selling value, or value of work done	Materials used, cost	Work given out, amount paid to other firms	Net output, excess of column 1 over columns 2 and 3	Average number of persons employed (excluding out-workers)	Horse-power of engines at mines, factories, etc.
Mines and quarries.....	148, 026, 000	28, 495, 000	-----	119,531,000	965, 230	2, 495, 134
Iron and steel, engineering and shipbuilding trades.....	375, 196, 000	212, 224, 000	9, 890, 000	153, 082, 000	1, 539, 415	2, 437, 481
Metal trades, other than iron and steel.....	93, 465, 000	81, 341, 000	231, 000	11, 893, 000	114, 473	83, 974
Textile trades.....	333, 561, 000	235, 038, 000	4, 189, 000	94, 334, 000	1, 253, 044	1, 987, 765
Clothing trades.....	107, 983, 000	58, 185, 000	2, 125, 000	47, 673, 000	756, 466	84, 806
Food, drink, and tobacco trades.....	287, 446, 000	197, 734, 000	198, 000	89, 514, 000	463, 701	380, 171
Chemical and allied trades.....	75, 032, 000	53, 466, 000	9, 000	21, 557, 000	127, 842	214, 770
Paper, printing, stationery, and allied trades.....	61, 308, 000	26, 611, 000	1, 047, 000	33, 650, 000	325, 475	237, 573
Leather, canvas, and india-rubber trades.....	34, 928, 000	26, 229, 000	81, 000	8, 618, 000	84, 724	54, 891
Timber trades.....	46, 390, 000	24, 780, 000	166, 000	21, 444, 000	239, 195	173, 813
Clay, stone, building, and contracting trades.....	116, 692, 000	49, 679, 000	6, 557, 000	60, 456, 000	725, 240	433, 279
Miscellaneous trades.....	8, 288, 000	3, 778, 000	67, 000	4, 443, 000	46, 874	9, 417
Public utility services.....	77, 051, 000	30, 786, 000	325, 000	45, 940, 000	342, 491	2, 059, 737
Factory owners, power only.....	-----	-----	-----	-----	806	102, 198
Total.....	1, 765, 366, 000	1, 028, 346, 000	24, 885, 000	712, 135, 000	6, 984, 976	10, 755, 009

Source: United Kingdom Census of Production, 1907 (final report), p. 21.

TABLE 2.—*Position of 5 leading British industries in total export trade*

[Compiled from British official export statistics]

Percentage of exports composed of—	1913	1928
Coal.....	9.7	5.4
Iron and steel and manufactures thereof.....	10.5	9.2
Cotton manufactures.....	24.1	20.1
Wool manufactures.....	6.8	7.9
Machinery.....	6.4	7.4
Total of 5 trades.....	57.5	50.0
Other export trades.....	42.5	50.0
Total.....	100.0	100.0

Source: The United Kingdom, an Industrial, Commercial, and Financial Handbook (T. P. S. 94, Bureau of Foreign and Domestic Commerce, U. S. Department of Commerce, 1930, page 512, table 8).

The coal industry, although declining in efficiency as evidenced by output per man,² still furnished the big export item, and in 1913 shipped more than a quarter of the output abroad and accounted for (exclusive of bunker coal) more than 10 percent of the value of all exports of British produce, besides furnishing outward cargo for the large tramp fleet, thereby reducing the freight rates on imports. The large shipments of machinery of all kinds, and particularly textile machinery, were going not only to Empire markets, but also to build up textile industries in countries which were destined to become England's chief rivals. Their competition, however, was not as yet very formidable, and while the proportion of textile yarns and fabrics in the total exports had declined from 60 percent in 1850 to 34 percent in 1909-13, the absolute quantities were large and increasing in some lines; there was also a growing domestic demand. This was particularly true of the cotton industry, in spite of the rapid spread of the industry over many parts of the world, partly assisted by the establishment of British branches in the Empire and foreign countries and by the migration of British textile experts, in addition to the all-important factor of British textile machinery. Shipbuilding was very active and gave employment to the numerous collateral engineering trades.

But there was evident stagnation in a number of British industries. In iron and steel England was becoming technically backward. This industry presented the most striking evidence of the handicaps of a pioneer country that cannot keep up with technical progress, either on account of innate conservatism and tying up of too much capital in antiquated equipment, or because it is deprived of its traditional advantages by a new technical process. The cotton industry was more or less in the same position, and the growing use of automatic looms and the comparative ease with which the more staple manufacturing parts of the cotton industry lend themselves to mechanization and establishment in countries relatively undeveloped industrially, was appearing on the horizon as a threat to one of the most important British export industries. On the other hand, the finishing parts of the cotton industry in England were among the best organized and efficient.

Clapham (vol. III, p. 71) describes the position of industrial England at the outbreak of the war as follows:

Economists had not then completed their analysis, and few other people thought in economists' terms, terms of real not money prices, terms of efforts and sacrifices. Had many contemporaries been so thinking, and had they been masters of all the facts, they might have been confirmed in a common opinion that Britain, though as fully occupied with work in 1910-13 as any country can hope to be, was yet not so stirring industrially as America or Germany, nor so stirring as she had herself once been; but that her conservatism had been shaken and that she was preparing, at her own pace, in those last years, to prove that she was not decadent, though both enemies and desponding friends often said that she was.

POST-WAR INDUSTRIAL PROBLEMS

The post-war period, with its tremendous problems of economic reconstruction, has naturally affected the industrial organization of the country. In addition to the great stimulus to collective action furnished by the various controls necessitated by the war, there were

² Clapham, *op. cit.*, p. 63.

the factors of excess equipment in the war industries, falling prices, shifts in markets on account of competition from the United States and Japan and rise of new industries like the chemical, and large scale industrial amalgamations necessitated by the tremendous demands of the war. The psychological reaction from the traditional (not as traditional as many Americans imagine) laissez-faire attitude was accelerated by the growing problems of unemployment and State intervention. The increasing pressure on British industry from the new industrial countries, which even before the war had begun to undermine the old reliance on the competitive system, became much greater during the post-war period and consequently still further weakened the traditional British economic psychology. The opposition of British industry to intervention by the State may not have disappeared theoretically, but we cannot close our eyes to the influence of the war experience, and the apparent inability of some of the most hard-pressed industries to clean house and develop a unified policy without State compulsion or encouragement. In fact, the pressure became so great that a number of industries, far from resenting Government interference, took the initiative in pressing for Parliamentary action that would compel the industries to eliminate surplus facilities and regulate production and prices. In one particular case, notably in the steel industry, the Government used the tariff weapon to bring about necessary amalgamation and, what is more significant, also for the purpose of forcing the International Cartel to enter into a proper arrangement with the British steel industry.

The British Government as well as some of the industrial leaders have come to the realization that the international economic environment, not to speak of the political environment, has changed too basically to make it possible for British industry to recover its old position or to adjust itself to the new conditions by the traditional individual efforts, especially since in some of the countries whose competition is most directly influencing the British foreign trade position, Government intervention controls have assumed enormous proportions. While it is true that the latter is motivated very largely by political considerations and in the long run is likely to injure the foreign trade of the countries involved, the fact remains that the immediate impact of the new form of competition is very disturbing and very difficult, if not impossible, to cope with by mere private efforts.

The immediate problem of adjustment in British industry that calls most urgently for collective action is that involved in the reduction of production capacity necessitated by the shrinkage in foreign markets. In the two basic industries—cotton and coal—it was the outstanding problem, while in the case of iron and steel it was primarily a question of collective action and modernization of plant, and it is significant that in the three cases the measures adopted to bring about even a temporary solution involved a stiff dose of State intervention utterly out of line with the traditions of British industry.

An analysis of the post-war problems of the coal and cotton industries and the measures adopted for the reorganization of the two industries will bring out the main characteristics of the new British industrial policy.

REORGANIZATION OF BRITISH COAL INDUSTRY

The World War was particularly hard on British staple industries. They found it more difficult to adjust themselves to the accelerated tempo of production and after the war discovered that many of their old foreign connections or markets had been destroyed or greatly changed. This is particularly true of the coal industry which had begun to show signs of relative decline before the war. It was also subject to distortion immediately after the war, like the strike in the United States, occupation of the Ruhr, and the general strike in England—all these delayed the work of adjustment to post-war conditions. Its technical backwardness, naturally, became a much greater handicap under the new conditions. When, finally, the industry had to meet the new problems, it was found necessary to apply radical measures—hence the new policy of compulsory amalgamation, price fixing, wage fixing and, finally, nationalization of royalties.

It is unnecessary for the purpose of this study to go into a detailed discussion of the economic and social difficulties of the British coal industry which, by the way, is probably one of the most investigated of the British staple industries. It might be useful, however, to call attention to a few facts indicating the critical state of the industry which led to the adoption of the Coal Mines Act of 1930.³

According to the report of the Royal Commission on the Coal Industry of 1925, not less than one-twelfth of the population of the country was directly or indirectly dependent on the British coal industry, which was also of predominating importance as the foundation for the iron and steel, engineering, and shipbuilding industries, as well as of foreign trade in general in which it figured not only as an outstanding export product but also as an outward cargo, determining to a considerable extent the level of ocean freight rates. At the outbreak of the World War coal exports contributed in value about one-tenth of the total British exports, and the annual coal output was valued at £136,000,000 with an annual pay roll of £93,000,000.

In spite of the great increase in the industrial output of the world as a whole during the postwar period, and the progress of the coal industry in a number of European countries, the British coal industry declined in production from 286,000,000 tons in 1913 to 258,000,000 tons in 1929. This decline should be considered in the light of the fact that some of the other British staple industries, like cotton and iron and steel, also showed definite signs of stagnation or decline.

During the World War the British coal industry suffered from a shortage of labor and was not in a position to meet fully the increased war demands. It also suffered from the physical neglect and lack of developments during the war, and the excessive exploitation of the more productive and accessible seams. The insistent demands of the miners for higher wages on the basis of the prosperous condition of the industry and the high cost of living, compelled the Government to appoint in 1919 a commission (the Sankey commission) to investigate the industry, which reported in favor of a 7-hour day and a wage increase of 2 shillings per ton. It also recommended a continuation

³ The following account is based largely on "The British Coal Dilemma," published by the Institute of Economics, July 1927; and "The United Kingdom, an Industrial, Commercial, and Financial Handbook," T. P. S. 94, B. F. & D. C., U. S. Department of Commerce, 1930, pp. 90-112.

of the wartime Government control and a limitation of the profits of the mine owners, condemned the current system of ownership and working conditions in the industry, recommending in its stead complete Government ownership of the coal deposits and the mines, which was in agreement with the demands of the miners.

The difficulties of the British coal industry during the post-war period were due in part to the accentuation of the inherent defects of the industry and partly to new factors, some of which affected many other British industries. The split-up of the industry into a large number of units, the thinness of some of the seams which prevented mechanization and consequently the increase in per capita output to support the relatively high wage level, and the traditional conservatism of the industry, were inherited from the pre-war period. The increased coal production in Continental Europe and other traditional markets for British coal, the use of oil, the technical advances in the utilization of coal, and the financial difficulties connected with the devaluation policy, were largely new factors developed during the post-war period. The prosperity enjoyed by the British coal industry during 1922 to 1924 was based largely on temporary factors such as the occupation of the Ruhr, the strike in the United States, and the settlement of labor difficulties which left untouched the fundamental handicaps of the industry. With the falling off in the foreign and domestic demand toward the end of 1924, the high prices of British coal ascribed by the mine owners to the 7-hour day and the increased wages, became too burdensome and gave rise to an agitation for a revision of the Coal Mines Act of 1919. A strike was narrowly avoided in July 1925 by the granting of a Government subsidy, which guaranteed the mine owners a profit of 36 cents per ton in spite of the high production costs, and by the promise of a royal commission to investigate the whole industry.

The failure of the Government subsidy policy is evidenced by the fact that it cost the Government \$120,000,000 instead of the estimated 40 millions during a period when over 70 percent of the coal output was produced at a loss. The mine owners with their emphasis on the immediate needs of the industry were pressing for a lengthening of the 7-hour day to 8 hours and a reduction in the wages of the railway workers to lessen the freight rates. The miners, on the other hand, could not see anything short of a thorough reorganization of the industry on the basis of nationalization of the coal deposits and the mines, with corollary developments of the electrical and by-products industries. The report of the royal commission favored the nationalization of the coal resources but rejected the nationalization of the mines which in its opinion offered "no advantages which cannot be attained as rapidly or more readily in other ways," the other ways being "greater application of science to the working and using of coal through larger units for production and distribution, through fuller partnership between employers and employees." This was to involve voluntary amalgamation into larger production units, large cooperative selling agencies to increase the efficiency of distribution, a closer connection between mining and allied industries—production of electricity and by-products—and an improvement in labor relations through new methods of fixing wages, establishment of joint committees, introduction of family allowances, compulsory profit sharing, proper housing, etc. Since these recommendations were all of a long

range character, the royal commission was faced with the task of recommending immediate steps to prevent the collapse of the industry. This could be either the continuation of the subsidy, which was to expire on May 1, 1926, or a reduction in cost through an increase of hours or a reduction in wages. The continuation of the subsidy was rejected on the ground that it was "indefensible, that the people engaged in other industries should be taxed in order to provide profits for the employers or to maintain the wages of the workers in the particular industry affected." The recommendation of the committee centered on the reduction of wages as a means of reducing costs, rejecting the lengthening of the hours as undesirable from the standpoint of international labor standards. The reduction in the minimum wages was to be made on the basis of a national rather than a district agreement, and was to be tied up with some agreement as to the reorganization of the industry as a whole. The report of the commission, which appeared in March 1926, was accepted by the Government and in a general way by the mine owners who, however, failed to indicate the character of the wage agreement after the expiration of the subsidy on May 1. The miners rejected the suggested wage cut or an increase in hours and insisted that the national wage agreement with the national minimum be adhered to, and refused to separate the reorganization of the industry from a discussion of wages. After fruitless negotiations, in spite of the intervention of the Government, and the rejection by the miners of a definite reduction in the minimum addition to standard rates and an increase in the working day to 8 hours, proposed by the mine owners as a preliminary to the reorganization of the industry, a call for a general strike was issued by the Trade Union Executive on May 3, calling also for a cessation of work in the transport, iron and steel, building, electricity and gas, and printing trades.

As was to be expected, the disastrous strike did not solve the problems of the British coal industry. The reduction in wages and the increase in working hours from 7 to 8 or more were insufficient to place the industry on a sound economic basis. The Mining Industry Act of 1926, which was designed to carry out some of the recommendations of the Royal Commission on the Coal Industry (1925), resulted in considerable amalgamations in the anthracite section of the industry and in the Welsh bituminous output. Some progress was also made in the reorganization of marketing and the fixing of minimum prices with penalties for overselling. A voluntary coal marketing scheme was inaugurated in 1929, assigning to each colliery a standard rate of production based on normal demand, with deviations from such normal demand determined every few months. This voluntary scheme finally was succeeded by the Coal Mines Act of 1930.

THE COAL MINES ACT OF 1930

The Coal Mines Act of 1930 was practically a measure of compulsory cartelization. It provided for limitation of output by assigning quarterly quotas and minimum prices for each coal district; standard tonnage for each mine on basis of previous output during a certain period to be determined by committees; allocation of output on a monthly basis, penalties for excessive production, and compensation for shortage; the various schemes of regulation to be prepared by the

colliery owners in each district but subject to approval by the Board of Trade. The act abolished export subsidies. There were difficulties created by the lack of separation between production for domestic and foreign markets and also by interdistrict competition. In May 1934 the domestic and export allocations were separated and the interdistrict minimum prices were coordinated, which was expected to eliminate interdistrict competition and to strengthen the monopoly position of the local collieries. Owner transfers were restricted to districts so that the Act has not been very helpful in eliminating the less profitable mines.

Part II of the act was intended to promote amalgamation by empowering the authorities to present amalgamation schemes if the owners themselves were unable to do so. This power of the Coal Reorganization Committee was subject to a number of reservations, including proof of national interest and of anticipated reduction in cost of production. This part of the act met with strong opposition from the owners. The owners of the profitable mines did not like the idea of buying out the less profitable ones; the owners of the latter did not like the idea of being eliminated from the industry.

The experience with the act was ably summarized by a British publication⁴ as follows:

The 1930 act was at once a success and a failure. * * * On the one hand, the community gave to the industry certain privileges with a view to improving its immediate economic position. On the other hand it demanded that the industry should employ the economic respite resulting from the use of such privileges in reorganizing its production on a lower cost basis, and so making some return to consumers for their previous sacrifices. Five years of the 1930 act proved the industry willing to accept the privileges and to derive some benefit from them, but reluctant to implement the responsibilities that had simultaneously been placed upon it.

The demand of the miners for a wage increase in 1935 served to accelerate the adoption of central selling schemes by a number of districts. The Government announced its intention to obtain legislation for unification of royalties as well as to make more effective the provisions of the act regarding compulsory amalgamation.

One of the results of centralized selling has been the increase in the price of coal to the utilities and other large industrial consumers, which has been justified by the claim that prior to the adoption of centralized selling the larger consumers were not bearing their share of production costs, with the consequence that the small consumer had to bear more than his share. Another result, less justified, is reflected in the complaints about the difficulties experienced by consumers in changing the source of supply in order to obtain the grade of coal best adapted to their purpose.

The efforts of the Government to strengthen the compulsory amalgamation provision of the act, as represented by the bill introduced in 1936, met with such strong opposition from the coal owners that the Government was compelled to postpone further action and it was not until the end of 1937 that a new bill was introduced dealing principally with the unification (nationalization) of royalties but including also provisions for amalgamation. The difficulties connected with the determination of the amount of compensation for royalties were finally eliminated by the decision of the special tribunal

⁴ "Planning," a broadsheet issued by P. E. P. (Political and Economic Planning), June 28, 1938.

which fixed the amount at nearly £66,500,000, representing a capitalization of the royalty income at 6½ percent, as compared with the £150,000,000 originally claimed by the Mineral Owners' Joint Committee.

The act as finally passed on July 29, 1938, provides that the purchase of royalties is not to be completed until July 1942, in order to allow time for the allocation of the shares of each district and individual owners by special valuation boards. On the other hand, the Coal Commission, which is charged with the execution of the act, can begin at once to consolidate leases with a view to enabling the working lessee to concentrate his operations in the most economical manner. The functions connected with the compulsory amalgamation provisions of part II of the Coal Mines Act of 1930 are transferred to the new Coal Commission. Section 47 of the Coal Act of 1938 declares that—

Where in the opinion of the Commission the number of separate undertakings * * * to which the coal in any area is leased is so great as to be detrimental to the economical and efficient working, treating, or disposing thereof, it shall be the duty of the Commission to endeavor to effect a reduction in the number of such undertakings.

Under the new act the Coal Commission, when convinced that voluntary amalgamation is not proceeding fast enough, may recommend to the Board of Trade that the powers of compulsory amalgamation be exercised in a specific area, indicating in the report the advantages that are expected to result from such amalgamation. The Board of Trade may lay such recommendations before Parliament and then make a provisional order directing that the compulsory amalgamation powers of the Commission become exercisable in the district involved. Under the new act it is not necessary for the Commission to furnish proof of anticipated reduction in cost or that the amalgamation scheme will not cause injury to any interests. The provisional order becomes effective upon confirmation by Parliament, either on the date of the act confirming the order or on January 1, 1940, whichever is the later date.

On May 24, 1939, the Coal Commission issued a report embodying proposals for the amalgamation of colliery undertakings, which would reduce the number of units from 959 to between 50 and 60. As a basis for its recommendations, the Commission calls attention to part II of the Coal Act of 1938, with the following comment:

The reasons that may be presumed to have led Parliament to prescribe this policy are material to the manner of its execution. It seems reasonable to suppose that they are to be found in the companion legislation which gave the industry statutory machinery for the maintenance of prices and which unified royalties. By the grant of statutory price control Parliament placed the industry under a special obligation, in the interests of the consumer, so to organize itself that costs of production might be reduced by every possible means. It is obvious that, in any industry which is working under a quota system on account of its excess productive capacity, the opportunity for reducing costs may normally be expected to be increased by mergers of the interests of undertakings⁵ at present competing with one another, at any rate up to the point where the size of the combined undertaking becomes such as to create its own countervailing disadvantages. Moreover, if schemes of cooperative selling by competitive undertakings are to be administered smoothly for their participants and satisfactorily for their customers, it is necessary to reduce to a minimum the number of conflicting vested interests among the producers, and to secure to the maximum extent consequent elasticity in sources of supply.

⁵ Throughout this memorandum the term "undertaking" represents a concern or group of concerns under unified control.

Again, by unifying royalties, Parliament must have intended to provide means of removing, so far as is still possible, the handicaps to efficient layout and the temptations to wasteful production created by the piecemeal development of the industry owing to the accidents of multiple ownership. In developed coal fields this can now be attempted only by such mergers of the interests of neighbouring lessees as will lead to the creation of productive units of a size and type best calculated to secure the efficient working not of a particular individual's coal, but of the area as a whole, and the proper development of the country's fuel resources.

While the Commission's recommendations are very comprehensive and far reaching, there is clear evidence of extreme caution and emphasis on gradualness and the desirability of cooperation on the part of the industry:

The Commission's object in putting forward this plan is not to convey decisions but to furnish a basis of discussion—not discussion whether some measure of reorganization by amalgamation is desirable, for we hold that to be settled policy, prescribed by statute, but as to the best way of carrying it out. It is meant as an invitation to the industry to cooperate in giving effect to that policy on agreed lines.

In some districts, the report points out, considerable progress has been made in the way of voluntary consolidation. In North Staffordshire, for instance, three groups are responsible for 85 percent of the output, with a joint company for the purpose of acquiring and closing the small superfluous undertakings. In Northumberland over 70 percent of the output is produced by four groups. The same is true of Lancashire and Cheshire, as well as Durham, where the large coal amalgamations are a part of the large iron and steel combinations.

In introducing the specific recommendations, the Commission makes the following reservation:

It is not suggested that every one of these areas should be consolidated at once by the immediate merger of all the undertakings within them. In some places, no doubt, there will be no good reason why this should not be done. But in others it may be better to form in the first instance one or more nucleus amalgamations of neighbouring collieries with similar interests and of similar characteristics, and to enlarge them gradually after they have run themselves in. Some undertakings may be difficult to amalgamate on fair terms because of their exceptional financial positions; others may be so near exhaustion that it is not worth while ever to include them. Another reason for proceeding by stages is that it may be wise, especially in places where no big units have yet been created, to allow time for people to be trained in the technique of controlling them, and to arrive by experiment at the optimum size for local conditions.

REORGANIZATION OF THE BRITISH COTTON INDUSTRY

The problems of the British cotton industry are in some respects more serious and more difficult of solution than those affecting some of the other British basic industries. They typify, in a concentrated form, the post-war difficulties of a pioneer industry that has failed to adjust itself to the new conditions and that has, in addition, been exposed to the unhealthy stimulus of a brief post-war boom which has left its imprint on the financial structure.

Commenting on the industry in 1936, a writer in the *Manchester Guardian Commercial* (March 27, 1936, p. 6) aptly remarks that:

It might perhaps be said that Lancashire spent the first 10 or 12 years after the war hoping for a return of the pre-war normal trade; that the next 5 or 6 years were marked by despair of ever returning to that trade; and that the next 5 or 6 years will see hopes realized—but more modest hopes, based on a truer appreciation of what world trade in cotton goods can reasonably be expected to yield to Lancashire.

One of the difficulties of the British cotton textile industry is its traditional decentralization, which was regarded during the upward trend of British economy not only as essential on account of the highly specialized character of the industry, but also as a shining example of British economic individualism. On the other hand, in the countries most responsible for the decline of the British cotton export trade—Japan and British India—particularly in the former, the cotton industry is highly integrated and controlled in all its branches, including financing and raw material handling by a very few large firms of predominating financial standing. When due consideration is given to the other handicaps under which the British industry is working, such as the higher cost of production, the obsolete character of the British equipment, the extreme sensitiveness of the industry to world economic trends, and the fact that in the raw material producing countries, particularly Latin America, cotton manufacturing has been regarded as best adapted for an initial step in industrialization, there is reason to doubt whether the British cotton industry, except for certain specialities, is likely to regain its traditional position in the world markets.

At a meeting of the Lancashire section of the Textile Institute on December 2, 1938,⁶ it was stated by one of the speakers that of the total loss in exports of approximately 5,000,000,000 square yards, roughly two-thirds had been lost to local industries, and one-third to foreign competition. The same speaker gave as his opinion that the possible volume of exports from Lancashire that may be expected in the future will fluctuate between 1,000,000,000 square yards as a pessimistic minimum, and 2,000,000,000 as an optimistic maximum.

Under the circumstances, it was quite obvious that the industry needed not only a considerable curtailment of capacity, but also a thorough reorganization of its structure, particularly the financial side, which has been distorted by the promotion boom of 1919–20. In addition to the resulting burden of overcapitalization, the industry is suffering from the fact that a good deal of the post-war financing came from people in moderate circumstances who were not in a position to keep up their payments during the depression, with the result that the shares found their way into the local banks which in many cases are not yet prepared to accept the consequences of the necessary drastic reorganization. Since 1922 there has been a succession of committees with various schemes for restoring the industry, ranging from a recommendation to revive the wartime control of production and prices, to the actual creation of organizations like the short-lived American Cotton Yarn Association, Ltd., which was to curtail production and fix minimum prices for the American section of the industry, and the proposed organization of the Egyptian spinners to perform the same task for the Egyptian section. The efforts of the Joint Committee of Cotton Trade Organizations to get the industry to deal with what it considered the two greatest evils—cutthroat competition and redundant capacity—came to nothing. The same may be said of the widely publicized scheme of the Federation of Master Cotton Spinners' Association for a new association representing all spinners, to control the industry by means of quotas and uniform sales contracts, with direct price fixing through subsidiary organizations.

⁶ "Manchester Guardian Commercial," Dec. 9, 1938, p. 551.

The failure of the various attempts to do something for one of the most important British industries, admittedly in need of a drastic overhauling if it is to survive, has been attributed to the great variation in the size of the constituent units, which naturally affects their attitude toward the various plans for control and curtailment. It is the old difficulty which is responsible for so much of the internal friction in cartels and trade associations. The large units, with their heavy overheads, are seeking to attain security through control, while the smaller and more mobile units are willing to take a chance. In the case of the British cotton mills, the larger units are also old. There is also the fact that the British cotton industry is primarily an export industry and that the various proposed schemes were of little value in dealing with the most difficult problem of meeting the new competition in the markets traditionally dominated by the British industry and now rapidly disappearing under the onslaught of the Japanese competition and local production.

The most serious attempt to meet the difficulties of the cotton industry is represented by the Lancashire Cotton Corporation, organized in January 1929 with the influential assistance of the Bank of England. Its object was to take over 200 mills representing about 10,000,000 spindles, scrapping the inefficient mills, and building up the remaining capacity into a number of large and highly specialized units under a central policy control. What was most important, the capitalization was to be cut in half. The actual achievements of the corporation have fallen short of the expectations, both from the standpoint of the organization itself as well as of its effect on the solution of the fundamental problems of the British cotton industry. According to the reports in 1937, the corporation had acquired only 145 mills, instead of the anticipated 200. The amount expended in acquiring the mills evidently has been far above the value of the properties, judging from the fact that in 1937 a capital reconstruction scheme was carried through by which the debenture and share capital was reduced by nearly two-thirds and the fixed assets from £9,187,924 to £3,347,632, the latter figure representing the "maximum values which independent valuers had considered it reasonably possible to place on such assets as a going concern."⁷ The improved demand during 1937 enabled the corporation to start a depreciation reserve with an allotment of £155,000.

Evidently the efforts of the Lancashire Corporation were not sufficient to bring about the necessary adjustment in the industry by cutting down the excess production facilities, and a more direct method had to be applied through the agency of the spindles board, created by the Cotton Spinning Industry Act of 1936.

COTTON SPINNING INDUSTRY ACT OF 1936

The act, which is officially designated "to provide for the elimination of redundant spinning machinery in cotton mills in Great Britain by means of a board having power to acquire property and to borrow and levy money," is based on recommendations of a committee appointed by the industry. It embodies the principle that the whole cotton industry should bear the cost of eliminating surplus spindle capacity. The spindles board, created by the act, is appointed by the

⁷ "The Statist," Apr. 17, 1937, p. 618.

board of trade and is authorized to borrow up to £2,000,000 for the purpose of acquiring "such premises * * * and machinery * * * and other things * * * with a view to the elimination of redundant spinning machinery in cotton mills in Great Britain." The board may exercise such powers during 2 years after its appointment, subject to extension for an additional period of 1 year by the board of trade. The spindles board may dismantle, break up, sell or otherwise dispose of the property acquired, or may maintain and repair it for the purpose of selling, but cannot export it or sell for export. In order to repay the loans contracted by the spindles board, a levy based on the spindle capacity of every cotton mill in Great Britain is to be paid to the spindles board for a period of 15 years at the rate of 1½ d. per mule spindle or its equivalent in rings (one ring spindle being equivalent to 1½ mule spindles). The powers of the board became operative on September 14, 1936.

According to the first annual report of the spindles board, the total mule equivalent spindle capacity of the cotton spinning industry on September 14, 1936, was 45,875,251, and the spindle levy for the year amounted to £223,005. During the year the board acquired or committed itself to acquire 3,265,000 mule equivalent spindles, involving the purchase of plant and machinery at a total cost of £842,776. On the basis of the 1,900,000 mule equivalent spindles already scrapped and the disposal of lands and buildings it was estimated that there would be a loss of £412,000 for the year's operations. It is interesting to note that in order to make up for the levy there was an extension of the price fixing agreement in the industry, so as to obtain a price sufficient to cover the increased cost of production.

During the second year of its operation the board acquired or agreed to acquire only 1,304,000 mule equivalent spindles, the decline as compared with the first year being ascribed to "the improved trade * * * which gave rise to a spirit of optimism which, combined with hopes of a useful reorganization of the cotton industry as a whole, presumably caused a number of mill owners to continue to run their mills, which, otherwise, they would have offered to us. It is much to be regretted that this optimism has proved to be unfounded." The latter statement is borne out by the fact that in spite of the reduction in the capacity of the industry by more than 4,500,000 spindles during the 2-year period ending September 14, 1936, the unused spindle capacity on this latter date was 14,000,000, as compared with an estimate of 3,900,000 in September 1937, and 10,000,000 when the board began to operate.

During the third year of its operation, the board acquired or agreed to acquire 1,605,000 mule equivalent spindles, making a total in the 3 years of the existence of the board of 6,174,000 mule equivalent spindles. It is interesting to note that the spindles capacity of the British cotton spinning industry, which was slightly less than 46,000,000 mule equivalent spindles at the beginning of the operation of the Cotton Spinning Act, September 14, 1936, was reduced only to about 41,000,000 mule equivalent spindles on March 14, 1939.

It was quite evident that the operations of the spindles board were not reducing the idle spindle capacity of the industry and that the board was still far from reaching the mark of 10,000,000 spindles originally contemplated. The purchasing powers of the board were extended until September 13, 1939, which is the full extent of the

period permissible under the Cotton Spinning Industry Act. As the Cotton Industry (Reorganization) Act, 1939—see page 27—did not come into operation owing to the outbreak of the war, the borrowing and purchasing power of the spindles board lapsed on September 14, 1939.

COTTON ENABLING BILL

Additional evidence, if needed, of the fact that the Spinning Act has not yet solved the fundamental problems of the British cotton industry is to be found in the strong agitation caused by the Joint Committee of Cotton Trade Organizations for the consideration by the Government of the cotton enabling bill. The main features of the measure as originally proposed, and based on the pamphlet issued by the committee under the significant title "Lancashire's Remedy," are summarized ⁸ as follows:

The main proposal is to set up a board representing the cotton industry in all its sections and also an independent advisory committee to examine schemes brought forward either on behalf of the industry as a whole or of individual sections and to report to the board of trade. The promoters of such schemes would have to show that they were supported by a majority of the section or sections concerned, that they contained safeguards against abuse * * *; that they were in the general interest of the industry; and, more particularly, that they would tend to assist export trade * * *. The cotton industry board referred to would consist of 12 persons, engaged in the industry—2 spinners, 2 manufacturers, 1 dyer, 1 bleacher, 1 printer, 2 merchants, and 3 representatives of the operators. The board of trade committee would have 3 members.

In addition to laying down conditions for the reorganization of the industry, the enabling bill was also to confer power for enforcing the adopted schemes, but it was proposed that Parliament should be restricted to approval or rejection of proposed schemes, but should not have the power to amend them.

The plan received the approval of all sections of the cotton industry, but the support of the Manchester Chamber of Commerce was given subject to the reservation that the bill shall contain "adequate safeguards for the protection of export trade interests and for defense against misuse of monopolistic powers."

The draft was submitted on November 26, 1937, by the Joint Committee of Cotton Trade Organizations to the Board of Trade. In his reply of December 20, 1937, the President of the Board of Trade pointed out several shortcomings, namely, lack of definiteness as to the scope of the schemes and lack of indication of methods for promoting export trade; he also suggested that each section of the industry should determine at least the main lines of the schemes for which it would desire to secure ultimately the approval of Parliament.

Judging from the attitude of the Board of Trade and of some of the opponents in the industry, it was evidently felt that the proposals laid too much stress on the necessity for curtailment and more profitable operation, and did not give sufficient attention to the competitive factor and the possibility of improving the efficiency of some sections of the industry.

As a result of this attitude, the committee revised the proposal and suggested that the schemes to be proposed by the various sections of the industry be confined to the following:

(1) Schemes for the elimination or reduction of redundant plant. Provision is made for such schemes to include compensa-

⁸ "The Manchester Guardian Commercial," Nov. 30, 1937.

tion to operatives who lose their employment as a direct result of the scheme. Schemes of this kind would be financed by a levy on the section concerned as in the case of the surplus spindles scheme embodied in the Cotton Spinning Industry Act, 1936.

It was agreed, however, that provision should also be made for "scrap and build" schemes, similar to that of the shipping industry, wherever the section concerned prefers this method.

(2) Schemes for the establishment of minimum prices or margins, based on the needs of the sections concerned and including regulations designed to make them effective and to prevent hardship. It is stipulated, however, that the legal minimum should not exceed a figure which an impartial investigation of costs shows to be sufficient to yield a reasonable profit to efficient concerns working full time on up-to-date machinery and with a reasonable capital valuation.

(3) The legalization at the request of both parties, of wage or other agreements between employers' and operatives' organizations.

In February 1938 a more detailed plan was submitted to the Government which, the President of the Board of Trade announced on May 31, was to serve as a basis for the Government draft of the bill, subject to the joint committee's successful efforts to bring about "the greatest possible measure of agreement within the industry." In accordance with the suggestions from the President of the Board of Trade, the executive of the Joint Committee of Cotton Trade Organizations continued negotiations with the various branches of the whole textile industry, including the distributing interests in Manchester, London, and Glasgow. As a result of these negotiations a revised draft was submitted in December 1938 which, in addition to eliminating the controversial provisions for pool and quota schemes, "scrap and build" schemes, and equalization of wage agreements, provided additional safeguards for protecting the confidential character of the information received by the Cotton Industry Board, as well as the interests of the various branches of the industry.

Strong opposition to the draft developed on the part of the exporting interests, and the draft was rejected by a vote of 281 to 237 at a special meeting of the Manchester Chamber of Commerce on January 25, 1938. This opposition was based largely on the fear of the merchants that an effort might be made to eliminate them in favor of joint selling organizations. The smaller producers feared the influence of the combines, while the exporters claimed that they were not sufficiently represented in the organization scheme.

On the other hand, the draft of the joint committee received the approval of two-thirds of the spinning, weaving, and finishing sections of the industry, according to an announcement at a meeting of the joint committee with the Lancashire members of Parliament at Manchester on January 27, 1938.

The Government draft made its appearance on February 7 and was sent out for balloting on the basis of the returns of the census of production taken by the Board of Trade in connection with the Import Duties Act of 1937. While the merchants were left out of the balloting, except in cases where they had also producing interests, the Chambers of Commerce of Manchester, London, and Glasgow

were requested by the Board of Trade to ascertain the views of their interested members.

The Government ballot included the votes of about 75 percent of the eligible concerns, representing five-sixths of the employment in the industry. The results of the ballot indicated that the draft was favored by 65 percent of the number of voting firms, 72 percent on the basis of employment, and 70 percent of the output. Since the merchanting section was not covered by the bill, unless it definitely declares in favor of joining, the hostile attitude of the merchants to the measure did not influence the attitude of the Government.

The Government measure was announced on March 16, 1938, almost exactly in the form in which it had been circulated for balloting, and came up for discussion in the House of Commons at the second reading on March 27.

PARLIAMENTARY DISCUSSION

In moving for a second reading, the President of the Board of Trade reviewed the familiar history of the attempts of the cotton industry to reorganize by its own efforts and the reasons for the proposed measure. He laid particular stress on the fact that it was an enabling measure and that its chief importance "lies in the possibility it gives after its passage for the industry itself to take certain measures and get statutory sanction for them." In dealing with the results of the ballot he pointed out that there was a conflict between the producing and the merchanting sections, the former being in favor and the latter opposed, but in view of the fact that it was a bill primarily for the assistance of the producers, he did not regard the objection of the merchants as valid, and he felt that the interests of the producers must have the fullest weight.

In a very significant passage, the President of the Board of Trade dwelt upon the remarkable fact that the industry most typical of British economic individualism has now reached a stage where it is compelled to look for salvation in "collective technique."

In a century which produced a good many individualistic industries there was no industry so fiercely individualistic as the cotton industry was before the War. Part of that was due to the temperament of the county in which that industry had been so largely built up; part of it depended upon the economic structure of the industry itself. We talk in grand terms about mills, and we have before our eyes visions of great factories employing hundreds or thousands of people, but the term "mill" is a very elastic one, as hon. Members from Lancashire know, and may mean very little more than the installation of a few spindles or looms in a shed or even a private dwelling-house; and all through the last century the lesson of the cotton industry was that it was possible to start a new enterprise without any great initial capital. We had a constant stream, during the last century, of the type of man who had begun as a worker, as a man employed in a mill, gradually starting up for himself and sometimes attaining great success. There is an old saying in Lancashire, "Clogs to clogs in three generations." That saying may have been unduly pessimistic. But in those days there were a great many examples of "clogs to patent leather" in one generation. Indeed one of the most distinctive features of the cotton industry before the War was that you did not get what I always regard as the most hateful legacy of the industrial revolution, that is, the hard-and-fast line between employed and employer. In that industry it was possible to cross that line and very often it was crossed.

What has created the revolution, what has caused this fiercely individualistic industry of the last century to become almost a pioneer in this new collective technique? It is, I am afraid, the hard tragedy of fact. I am not going to trace the tragic history of the last 25 years. It has been not less catastrophic because in some degree it was inevitable. In the old days the industry grew into its

prosperity as a supplier to certain primary producing countries—India, China, Egypt, and Brazil. As soon as the primary producing countries first began to stir from their agricultural pursuits, as soon as they first seemed to see the rather meretricious attraction of an industrial life, the cotton industry was bound to be the first industry in this country to suffer, because the introduction of cotton goods is the first experiment in industry which an agricultural people make. When we had the War, with the interruption of supplies, the post-war period, with the growth of economic nationalism, spurring on this new desire of the agricultural community to become also industrial, it was clear that the old predominance of Lancashire in these markets was bound to disappear; and, indeed, although we talk a great deal about what we have lost in the export market to competitors, the fact is that nearly 70 percent of the losses of British cotton exports since the War has been, not to foreign competitors, but to national industries growing up inside the countries that previously took our exports.⁹

The organization set up by the bill and its functions were described by the President of the Board of Trade, as follows:

The main purpose of the Advisory Committee is to advise the Board of Trade upon schemes that are put up. The Cotton Advisory Committee will consist of three independent members and is really a sort of court of appeal, not so much for the cotton industry as for all other interests that may be concerned. The export trade, consumers, the industry as a whole, the "fringe" industries that are affected by the cotton scheme—all these will have a right to lodge their objections to this committee and on that the committee will advise me. Then there are two consultative councils, one a wider advisory committee which will enable representatives, for instance on the basis of locality in the cotton trade, to be called into some kind of association with the machinery, and an export development committee which will consist partly of members of the board and partly of outsiders. Clause 5 provides for registration. As far as the producing sections of the industry are concerned, registration of course will be compulsory but, as far as merchanting is concerned, it will be voluntary, and only merchants who are registered will be able to take advantage of some of the privileges which are later accorded in the Bill. It is quite clear that, if we set out with the assumption that this is to try to organize the industry, the first essential is to know exactly of what the industry consists.

Then we come to the major part of the Bill; that is, the provision that is made for the passing of sectional schemes, and there is one thing about which I ought to warn the House. We use in the Bill the words "sectional scheme," and that may be rather liable to cause confusion with what we know commonly as sections of the industry—spinning, weaving, whatever it may be. It may give the impression that a sectional scheme must be one which refers to the whole of a particular section, spinning or weaving. That is not so. A section is defined by reference to the activities carried on or the products manufactured by a group of firms and inside what we commonly call the section you may have a number of people who are able to join in a sectional scheme of their own. There are only two types of scheme which the Bill permits. One is a redundancy scheme and the other is price fixing. Both are part of the same problem which faces the industry today, and that is the excess capacity which has been left in the industry as the result of serious contraction in the past 10 or 15 years. I will deal first with schemes dealing with redundancy. This, of course, is no new thing either to the cotton industry or to this House. In passing the "Spindles" Bill a few years ago the House gave authority for exactly this kind of redundancy scheme for one section of the industry alone, that is the spinning section. The scheme set out in these Clauses follows very closely the lines of the "Spindles" Bill and extends the possibility of that same kind of scheme to other sections of the industry.¹⁰

The two main objects of the measure—to eliminate redundancy and to fix prices—were discussed in detail by the President of the Board of Trade, and particular stress was laid on the fact that it will be the duty of the Cotton Industry Board "to see that the price fixed is one which represents the proper price for an efficient, and only an efficient, firm in that section."

⁹ Source: Parliamentary Debates, House of Commons Official Report, vol. 345, No. 73, Monday, Mar. 27, 1939, pp. 1734, 1735, 1736.

¹⁰ *Ibid.*, pp. 1739, 1740.

One of the most difficult problems involved in the bill is its effect on the rayon industry, which manifested strong opposition to being tied up—in its spinning and weaving processes insofar as it is distinguishable from similar processes in the cotton industry—with the cotton industry. In a memorandum issued in April by the rayon producers' section of the Silk Association of Great Britain, and supported by eight firms responsible for 98 percent of the total British production of rayon and staple fiber, it was pointed out that under the provisions of the bill the use of rayon in the loom, and all subsequent processes, will be controlled by cotton interests vested with statutory powers. It was therefore argued that "rayon should be recognized as a separate industry of national importance, and that its power of expansion and development should not be made subservient to cotton or any other fiber." It was quite natural that an industry with the meteoric career of rayon should object to being subjected to controls and restrictions devised primarily to save the remnants of the once flourishing cotton industry. As a member of Parliament, speaking for the rayon industry, expressed it: "it places a young and expanding industry under the control of an old, and, it must be admitted, decaying cotton industry." The President of the Board of Trade maintained that the safeguards in the bill were sufficient to protect the rayon industry from domination by the cotton industry and that the desire of the former for a separate scheme for rayon producers was out of the question, as it would involve excessive organization.

Finally, the President of the Board of Trade took up the question of the effect of the measure on the export trade. He called attention to the flexibility of the price fixing provision which will make it possible, with the cooperation of the various sections, to make special prices for special products or for a special market, which, in his opinion, is likely to be of greater assistance to export trade than the present indiscriminate price cutting. In concluding his discussion of the export trade phase of the bill, the President of the Board of Trade made the following significant statement which throws light on the present position of the merchant in the British cotton industry:

The old system, to which the merchants refer with pride, is breaking down—the old system under which the merchants were the only people who had any connection with or knew anything about the export trade, and under which the men who produced the goods had no connection with the consumers of the goods. That may have been all very well as long as the merchants were in a position, by the orders which they gave, to keep the producing section fully employed; but now that they cannot do that, of course the producing section itself is taking a greater and greater interest in the ultimate destination of its products.¹¹

The spokesman for labor came out in support of the bill. In fact, there was no real opposition to the measure as a whole, although some of the speakers expressed fear of possible domination by the combines, and others referred to the inadequacy of the measure as a means of reviving the export trade. Still others referred to opportunity for amendment in the committee. The most important amendment to the bill came from the spokesmen for the rayon industry who expressed their fear of domination by the cotton industry. They advanced a plea for an additional safeguard in the form of a rayon industry committee to be set up under the bill as a recognized authority, to

¹¹ *Ibid.*, pp. 1747, 1748.

safeguard and promote the interests of the rayon industry, without its being subservient to the cotton industry. The provision in section 15 was regarded as inadequate because it makes the appointment of such a committee contingent upon the recommendation of the cotton industry advisory board, and the acceptance of such a recommendation by the Board of Trade. The bill was committed to a standing committee on March 27, 1938, where it underwent a number of changes and was ordered printed on June 15.

The amendments proposed during the committee's consideration of the bill dealt largely with the question of rayon and merchandising. Various proposals were submitted for the separation of the rayon interests either in the production or the export stage. A vigorous fight was also made for an amendment making it obligatory for the Board of Trade to set up a separate rayon committee within three months of the passing of the act. The best the rayon interests could obtain from the committee was an amendment raising the membership of the rayon committee, if and when set up, from 8 to 10, by including 2 representatives of the business of spinning yarn from staple rayon fiber. There were also proposals to keep the benefit of redundancy payments from mills with foreign branches or interests. Other amendments submitted were designed to speed up the operation of the measure by cutting down the period during which redundancy schemes might be submitted.

The measure designated as the Cotton Industry (Reorganization) Act, 1939, was passed by Parliament on August 4, 1939. Upon the outbreak of the war and the introduction of Government control over a number of British industries, including cotton, the operation of the act was postponed by the act of October 31, 1939, which contains the following provision:

(2) The provisions of this act shall come into operation on such date as the Board of Trade may by order appoint, and orders made by the Board of Trade may appoint different dates for the coming into operation of different provisions of this act.

The cotton industry has received somewhat different treatment from the other textile trades since the outbreak of the war, owing largely to its complex organization and the fact that though the Cotton Industry (Reorganization) Act passed in August 1939 was suspended at the outbreak of the hostilities, part of its machinery could be resuscitated for control purposes.

At the beginning of the war it was not considered necessary to establish a controller as had been done in the case of other textile goods, for while the trade naturally contributed to the Government's war requirements, these demands do not utilize a very large percentage of the industry's productive capacity as is the case with wool, linen, jute or hemp. It was felt that the cotton trades could be of most use, both during the conflict and in the immediate post-war period, through the maintenance and gradual expansion of exports.

A Cotton Board was, therefore, set up on September 16 by the Board of Trade and Ministry of Supply to promote exports, to supervise the supply of Government requirements, and to smooth the way for an ultimate peacetime transition of the industry to the conditions contemplated by the Reorganization Act. This board consists of nine members with four committees to deal with: (a) Raw material supplies; (b) production and Government contracts; (c) exports; and (d) essential commodities and services.

PROVISIONS OF THE COTTON INDUSTRY (REORGANIZATION) ACT

As mentioned before, the bill was prepared to eliminate or mitigate the two outstanding evils of the industry—excess plant capacity (redundancy), and indiscriminate price cutting, and the measure is therefore divided into the provisions dealing with redundancy and price fixing. There are, in addition, provisions for assisting export trade and research, but they are of secondary importance. There are also provisions for financing the various lines of work as well as the purchasing of redundant plants.

The organizations provided to administer the Cotton Industry (Reorganization) Act consist of a Cotton Industry Board, a Cotton Industry Advisory Committee, a Representative Advisory Council, an Export Development Committee, and, if and when appointed by the Board of Trade, a rayon committee.

The Cotton Industry Board to be appointed by the Board of Trade is to consist of 15 members, of whom 3 (one of them to be designated by the Board of Trade as chairman) shall be independent people with a special knowledge of the cotton trade but with no financial or administrative affiliations with it, and the remaining 12 members to be taken from the cotton trade. The latter shall represent the various sections of the cotton trade as follows: 2, spinning and doubling, and 1, the operatives employed in spinning and doubling; 2, weaving, and 1, the operatives employed in weaving; 1, bleaching; 1, dyeing; 1, printing; 1, the operatives employed in the various finishing processes; 1, the export trade; and 1, either the merchants generally or the merchants engaged in export trade. The appointment is to be for a period of 5 years, with eligibility for reappointment. No member of the House of Commons is eligible for appointment on the board, and no member of the board, during a period of 5 years after he ceases to hold office, shall "acquire any such financial or commercial interest as would, if acquired during his period of office, have been likely to have affected him in the discharge of his functions as a member of the board." One of the independent members of the board is to be present at all meetings, but when the board is to perform certain functions, such as in connection with price schemes involving the disclosures of the details of individual businesses, the independent members will sit alone. In case of a tie, the independent member acting as chairman shall have a second or casting vote. The salaries or fees of the members of the board are to be determined by the Board of Trade with the approval of the Treasury. According to the statement by the President of the Board of Trade, the Cotton Industry Board, in addition to the specific functions prescribed by the bill, is also to act as a mouthpiece and clearing house for the industry and "to try to bring into the industry some degree of the unity which today is very badly lacking."

The Cotton Industry Advisory Committee, to be appointed by the Board of Trade, is to consist of three independent persons without any financial or commercial interest in the industry that are likely to affect them in the discharge of their duties. This body is to advise the Board of Trade upon schemes submitted and has been characterized by the President of the Board of Trade as a sort of a court of appeals, not so much for the cotton industry as for all other interests that may be concerned.

The Representative Advisory Council is to be constituted upon the submittal of proposals for such a body by the Joint Committee of Cotton Trade Organizations within 6 months after the commencement of the act. The functions of the Council are of a broad advisory nature, to advise "as to the expediency of the exercise by the Cotton Industry Board of any of their powers in any circumstances, or as to the manner in which any of these powers should be exercised." This is to be done at the request of the Cotton Industry Board.

The Export Development Committee, as the name implies, is to make recommendations to the Cotton Industry Board for the promotion and the development of export trade in the products of the industries covered by the act. This is partly a subcommittee of the Cotton Industry Board, since it is to be presided over by the chairman of that Board and to consist of five other members of the Board, of whom one is to be an independent person, and five additional members appointed by the Board. In selecting the five additional members, the Cotton Industry Board is to consult, in the case of three members, the representatives of the merchants engaged in export trade, and in the case of the other two members, the representatives of the rayon fiber producers.

The appointment of the Rayon Committee is subject to a finding by the Cotton Industry Advisory Committee that the majority of the representatives of the various branches of production and merchandising of rayon fiber and fabrics desire the establishment of a separate committee to represent that section of the textile industry. If approved by the Board of Trade, the committee is to consist of 10 members to be appointed by the Board of Trade upon consultation with the various branches of the industry as follows: In the case of 2 members, with producers of rayon fiber; 2 members, with the spinners of staple rayon; 2 members, with the weaving interests; 2 members, with the finishers of yarn spun from staple rayon fiber or of fabrics woven from rayon yarn; and 2 members with the merchants of rayon yarns or fabrics. There is a provision for consulting the Rayon Committee in connection with any price scheme submitted to the Cotton Industry Board affecting the sale of yarn spun from rayon fiber, or mixed yarns containing rayon fiber, or fabrics woven from rayon yarn or from mixed yarn containing rayon fiber.

The organization of the industry for the purpose of carrying out the provisions of the act is based on the requirement for registration. The Cotton Industry Board is to register upon application within 3 months from the commencement of the act, "persons carrying on business in the industry and merchants." The registration for merchants is optional, but only registered merchants will be entitled to the privileges accorded by the act. After the expiration of the 3 months' period, any person carrying on business in the industry, without being registered, is to be liable to a fine, for the first conviction not over £100, and also not over £20 for every day on which the contravention has continued; for the second conviction the fines are doubled. The register is to show the location and character of each business carried on by the registered person and such person is to furnish at the request of the Cotton Industry Board, at any time while his name is on the register, such other information as may be required by the Board.

The work of reorganizing the industry is to be carried out by means of "sectional schemes" to be submitted to the Cotton Industry Board by any section of the industry. A scheme may deal with the elimination of excess plant capacity, when it will be referred to as a "redundancy scheme"; or with the fixing of prices for the finished products or charges for processing in the production stage, when it will be referred to as a "price scheme."

The redundancy provisions of the act are essentially an extension of the functions performed by the Spindles Board under the Spinning Act for the spinning section of the industry. In order to provide for continuity in the redundancy elimination work in the spinning section, a clause was added to the Cotton Industry (Reorganization) Act enabling the Board of Trade to extend the powers under the Cotton Spinning Act for another 2 years. The redundancy schemes, which are to be administered by boards of independent persons appointed by the Board of Trade, may provide for the acquisition, by agreement, of such plant in a cotton mill, relating to the section of the industry involved, as may be considered expedient to acquire with a view to elimination of redundant plant in this section of the industry. It may also involve the acquisition of an entire cotton mill, including any estate or interest or right in land used in connection with the mill. The board administering any redundancy schemes is empowered to dismantle and break up any plant or other property acquired, or to sell or otherwise dispose of it and even repair it, if considered necessary for purpose of disposal. The board must not, however, dispose of any plant unless it is reasonably satisfied that it will not be removed from the United Kingdom. The board may be empowered to borrow money, with the approval of the Board of Trade and the Treasury, for the purpose of exercising its authority in connection with the purchase of redundant plants; it may also make payments to employees who lose employment by reason of the acquisition of such a plant.

The time limit for the submission of redundancy schemes to the Cotton Industry Board is 5 years, which, however, may be extended from time to time by the Board of Trade up to 15 years from the commencement of the act.

The "price schemes" are to be administered by boards elected by the persons registered under the scheme as carrying on business in the section of the industry to which the particular scheme is to apply. The scheme is to authorize the board in charge to determine from time to time the minimum prices and terms and conditions for the sale of the products specified in the scheme or/and the minimum charges and terms and conditions for processing the products or raw materials specified in the scheme. The prices, charges, and terms and conditions, are to apply to all persons registered under the various schemes, and since it is provided that no person shall carry on business in any section of the industry to which the scheme applies unless registered, it means that they apply to the entire section involved.

The Cotton Industry Board is authorized to permit, if deemed expedient for the purpose of maintaining or increasing consumption, a reduction in sales prices and processing charges below the minimum fixed by the price scheme.

The schemes may also provide for contributions by the owners of the mills to finance redundancy schemes and by all registered persons in the case of price schemes.

After a scheme is submitted to the Cotton Industry Board and found to satisfy the requirements of the act, it is published and submitted for a vote to all qualified persons, including organizations representing persons registered but not qualified to vote on schemes, as well as operations in the industry and manufacturers of rayon fiber in the United Kingdom. Upon approval of the scheme by a majority of the persons qualified to vote and voting, the Cotton Industry Board is to transmit the scheme to the Board of Trade and the Cotton Industry Advisory Committee, together with such changes as the Cotton Industry Board may recommend, and the report on the poll.

The Cotton Industry Advisory Committee, after considering the report and giving an opportunity for a hearing to all persons and interests affected, is to transmit to the Board of Trade a report containing an opinion on the following questions:

(a) Whether the scheme would be likely to involve undue hardship to the persons carrying on business in the industry otherwise than in the section thereof to which the scheme relates.

(b) Whether the scheme is contrary to the interests of operatives employed in the industry otherwise than in the section thereof to which the scheme relates, or of operatives employed in that section.

(c) Whether the scheme is likely to prejudice such expansion of the industry apart from the section thereof to which the scheme relates, or of that section, as may be expedient in view of increasing demand or technical improvements.

(d) Whether the scheme is likely to prejudice the needs or development of export trade in the industry.

(e) Whether the scheme is contrary to the interests of consumers or to the interests of any industry other than the cotton industry of the United Kingdom.

In the case of a scheme affecting certain products of cotton or rayon yarn, the Cotton Industry Advisory Committee is also to consult the representative interests in the wool or linen textile industry in the United Kingdom.

Upon approval of the scheme by the Board of Trade, subject to certain changes, notice of the proposed changes is to be sent to all qualified voters and a poll is to be taken if requested within 7 days by the requisite proportion of the qualified voters. If a majority of the vote is in the negative, no further action is to be taken with regard to the scheme.

In the case of a favorable vote, the Board of Trade may lay before Parliament a draft of the approved scheme, a report on the scheme by the Cotton Industry Advisory Committee, and a report of the Cotton Industry Board on the poll or polls on the scheme.

If either House of Parliament, within 28 days, resolves that the scheme shall not go into effect, no further proceedings shall be taken; in the absence of such a resolution, the Board of Trade may make an order confirming the scheme. The same parliamentary procedure applies to any order of the Board of Trade for revoking or suspending any scheme or part of a scheme already in effect. The maximum duration of a redundancy scheme is 15 years and of a price scheme 5 years.

The Cotton Industry Board is also given the power to perform the following services for the benefit of the industry:

To conduct or encourage research and experiments in connection with production or consumption.

To adopt measures to promote consumption by advertising, demonstration, or any other appropriate means.

To collect and publish statistics.

The financial provisions of the act relate to registration fees, which are to cover the general expenses of the Cotton Industry Board, and to service fees, which are to cover the expenses connected with special services, like research, statistics, etc. The funds for carrying out redundancy schemes are to be raised by contributions from the owners of the mills to which the scheme applies; in the case of price schemes, from contributions by persons registered under each particular scheme. The board in charge of a redundancy scheme may be authorized to borrow money, with the approval of the Board of Trade and the Treasury, for the purpose of financing its purchasing operations.

CONCLUSIONS

The foregoing survey of the British economic scene at the outbreak of the present war would seem to justify the following conclusions:

1. British industry had attained a considerable degree of collective organization for the purpose of regulating prices and output under conditions quite different from those prevailing in the United States under our antitrust legislation. Considering the traditional economic independence of the individual British industrialist, British industry as a whole has shown a remarkable readiness to resort to collective action.

2. The British Government had found it necessary to intervene in the reorganization of a number of basic industries like coal, cotton, iron and steel, and shipping, in order to assist them in adjusting themselves to the new conditions developed during the period following the World War.

3. It is too early to appraise the effect of the present war on British industry. Considering the relations between British industry and the Government at the outbreak of the war, and the character of the controls already imposed by the Government on British economy in the present war, there is justification for the belief that the British Government will find it necessary to intervene in the adjustment of British industry after the present war to a greater degree than after the World War.

PART II

CHAPTER I

HISTORY OF THE EXTENT AND CONTROL OF CONCENTRATION OF ECONOMIC POWER IN GERMANY

by

RUDOLF CALLMANN

CHAPTER II

REGULATORY EXPERIENCE IN GERMANY UNDER NATIONAL SOCIALISM

by

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Bureau of Foreign and Domestic Commerce

CHAPTER I

HISTORY OF THE EXTENT AND CONTROL OF CONCENTRATION OF ECONOMIC POWER IN GERMANY

ECONOMIC DEVELOPMENT OF THE CONCENTRATION MOVEMENT¹

The history of economic concentration movement is the history of the markets. Whether the businessman cooperates with his competitors or fights them has always been dependent upon the current market conditions. Interest attaches not so much to the fact that certain forms of combinations existed, nor to the forms which combinations assumed, as to their effects upon the economic character of their time.

BEFORE THE WORLD WAR

At the beginning of the Middle Ages² there existed freedom of trade. Proportionate to the limited amount of the slowly growing craftsmanship present in the economic life of the medieval town was a purchasing power that obtained increasing strength from agricultural progress. There was no disparity between supply and demand as long as agricultural technique multiplied productivity, and as long as conditions in trade remained stable. But gradually this situation changed; agrarian conditions within their limited technical capacities became static, while increase of population and migration to cities shook commercial stability. Supply exceeded demand, and the competitive struggle began, soon becoming intolerable. This state of affairs brought about the necessity to regulate business; freedom of trade disappeared, and the guild movement came into being.

With extraordinary success the guilds devoted themselves to the regulation of market conditions, and craft rose to its greatest glory. The narrow economic sphere combined town and country into economic unity, facilitating market regulation; since there were no contrary economic interests, municipal economic policy became a prop to the guilds. Eventually, after hard struggles with the "bourgeoisie" the guild developed from an association of self-seeking individuals into an organization for public weal, expanded its activities, and became the expression of middle-class policy and of cultural life.

Besides the guilds, which were the local organizations of town-economy, expansion of commerce and distribution of goods gave rise to new forms of organizations, and the first signs of international trade emerged. The crusades, establishment of fairs and markets, development of a money-economy, organization of traffic, reduction of inland

¹ See Rudolf Callmann, *Das deutsche Kartellrecht*, Berlin, 1934, pp. 53ff.

² See particularly: Heinrich Mannstädt, *Ursachen und Ziele des Zusammenschlusses in Gewerbe unter besonderer Berücksichtigung der Kartelle und Trusts*, Jena, 1916, ch. 1; Werner Sombart, *Der moderne Kapitalismus*, Leipzig, 1928, I, book I, ch. 6; II, pp. 130, 141; Sombart, *Die Deutsche Volkswirtschaft im 19. Jahrhundert*, Berlin, 1913, 153 ff; Pohle, *Der Unternehmerstand*, 1910; Pohle, *Die Entwicklung des deutschen Wirtschaftslebens im letzten Jahrhundert*, 3d ed., 1913.

duties, and particularly the discovery of America and organization of colonial trade, expanded the scope of commercial life, created "export craft," changed it to home industry, and ultimately to industrial manufacturing. As the foreign market expanded, and the town-economy evolved into a national economy, the strength of the guilds declined. The struggle with fluctuating market conditions became more and more difficult, and finally the guilds sank into stagnation, intensified by egoism, chicanery, and pettiness.

Guilds, home industry, and industrial manufacturing were not, of course, the only existing form of economic organization. However, it is of interest that in this period, highly influenced by anti-capitalistic catholic ethics, forms of organization arose which showed a pronounced capitalistic spirit.³ Thus we notice that as early as the Middle Ages there have been genuine cartels, such as the salt-selling syndicate of 1301;⁴ the pure selling syndicate in the alum trade of 1470.⁵ There existed also a price and regional cartel in the copper mining industry between the Fugger and Manlich groups of 1548,⁶ an agreement between Emperor Maximilian and the merchants of Augsburg, especially the Fuggers, with respect to silver and copper purchases.⁷ Further, there were bidding cartels,⁸ exclusive dealing agreements,⁹ and financial integrations.¹⁰

In the second half of the 18th Century increase of demand over supply, coupled with unexpected enlargement of industrial productivity, gave the industrial world an unprecedented freedom of activity while the small trades and crafts encountered increasing distress. Believing that introduction of free trade was responsible for these troubles of the middle classes and not seeing that both were attributable to technical progress,¹¹ a new guild movement was inaugurated, carrying the banner of the protective legislation of 1849. The cooperative marketing associations for the small and medium-sized enterprises in trade and industry (Schultze-Delitzsch) and in agriculture (Raiffeisen) were saluted as "guilds of the future."¹²

The overcapitalization of industry, and the burden of overhead cost, combined with the decline of the market and overproduction, led to the famous crisis of 1873. The desire to maintain a relatively stable price level prompted the German entrepreneurs, accustomed to discipline and subordination, and favored rather than hampered by law, to combine into cartels. The cartel idea spread rapidly and received added impetus when in 1879 the protective duties aided the cartels in regulating domestic competition. Before long Germany had become a typical cartel country.

³ See particularly: A. Menzel, *Schriften des Vereins für Sozialpolitik*, Leipzig, 1895, Vol. 61, p. 32; Emil Steinbach, *Der Staat und die modernen Privatmonopole*, Wien, 1903, p. 18; H. Levy *Monopole, Kartelle und Trusts in ihren Beziehungen zur Organisation der kapitalistischen Industrie*, dargestellt an der Entwicklung in Grossbritannien, Jena 1909. W. Stieda, *Ältere deutsche Kartelle in Schmollers Jahrbuch* 1913, p. 725; Walter Mollenberg, *Die Eroberung des Weltmarktes durch das Mansfeldische Kupfer*, Gotha 1911; W. Mück, *Der Mansfelder Kupferschieferbergbau in seiner rechtsgeschichtlichen Entwicklung*, Eisleben, 1910; Jakob Strieder, *Studien zur Geschichte kapitalistischer Organisationsformen; Monopole, Kartelle und Aktiengesellschaften im Mittelalter und zu Beginn der Neuzeit*, München-Leipzig 1925.

⁴ See Strieder, *op. cit.*, p. 69.

⁵ *Ibid.*, p. 70, 171 ff.

⁶ *Ibid.*, p. 489 ff.

⁷ *Ibid.*, p. 80.

⁸ Max Metzner, *Kartelle und Kartellpolitik*, Berlin, 1926, p. 3, refers to Ludwig Mittels, *Römisches Privatrecht bis auf die Zeit Diokletians*, Vol. 1, who discusses a bidding cartel of the oil tenants in antiquity.

⁹ Strieder, *op. cit.*, p. 144.

¹⁰ *Ibid.*, p. 166.

¹¹ See Gustav Friedrich Schmoller, *Zur Geschichte des deutschen Kleinwerbes im 19. Jahrhundert*, München, 1874.

¹² See Deumer, *Das deutsche Genossenschaftswesen*, I, 24 ff.; II, 101.

Though cartels were the most popular form of industrial organization, they were by no means the only form. The mining industry, showing a strong tendency to concentration as early as the 16th century, had received strong impetus toward integration¹³ from the peculiar legal situation with respect to mining in Germany and from the development of syndicates in the coal, iron, and steel industry.¹⁴ The tendency toward technical and commercial rationalization of enterprises led to horizontal concentration.¹⁵ The fusion movement in various industries likewise occurred in this period, so that we may describe the period from the beginning of the World War as being characterized by a tendency toward concentration, combination, and integration. Integration, however, is surpassed by horizontal combination and this in turn by horizontal concentration. Rationalization was sought through vertical and horizontal, especially horizontal, association. Market regulations, however, stood in the foreground of the industrialists' interest.

THE WORLD WAR

The World War brought a sudden change.¹⁶ With the end of competition, with the market dominated by government demand, and high prices caused by scarcity, cartels were deprived of their essential functions.¹⁷ The government took over their empty forms and made them war organizations. Capitalistic concentration on the other hand developed mainly for the purposes of increasing power and rationalizing production. It was then (1916) that Germany's most tremendous economic concentration, the foundation of the I. G. Farbenindustrie (Dye Trust), took place.

AFTER THE WORLD WAR

The period following the War—until 1925—showed concentration movements in three forms: formation of self-governing bodies of public interest ("Gemeinwirtschaft"), cartels, and inflation concerns. The "Gemeinwirtschaft" in the form of those self-governing bodies, such as the Reich Potash Council, the Reich Coal Council, the Iron Economy Bund, and the Electricity Council, was a continuation of the compulsory economy of the War. Though originally designed to introduce a revolutionary change in the economic order, they were

¹³ It is essential to use these terms in a particular sense. We, therefore distinguish: *concentration* or *association* in a broad sense, i. e. any kind of joining together; hence, we speak quite generally of the concentration movement. *Concentration* in a narrow sense is the horizontal association of like or similar enterprises, no matter whether in a loose form (e. g., cartel) or a close form (e. g., fusion). *Combination* is the association of unlike enterprises and may be *horizontal* (e. g., a steel factory and a rolling-mill, the association of kindred enterprises of the same economic stage with the same raw product) or *vertical* (e. g., coal mine and smelting works, furnace and steel works). The vertical combination is called *integration*.

A *cartel* is a contractual association of legally independent enterprises in the same or similar field of business formed with the intent, effect, or potentiality of influencing the market by means of regulation of competition. A *syndicate* is a cartel with a joint sales agency in which are centralized all sales in the protected market. A *trust* is a large combine, i. e., a fusion, concern, or holding company with dominant position in the market.

¹⁴ See Herbert von Beckerath, *Kräfte, Ziele und Gestaltungen in der deutschen Industriegewirtschaft*; Jena, 1924, p. 60; A. Heymann, *Die gemischten Werke im deutschen Grosseisen-gewerbe*, Stuttgart, 1904; K. Goldschmidt, *Ueber die Konzentration im deutschen Kohlenbergbau*, Karlsruhe, 1912.

¹⁵ See Manual Saitzew, *Horizontal and Vertical in Wandel der letzten Jahrzehnte*, Jena, 1927, p. 24.

¹⁶ Saitzew, *op. cit.*, p. 25; von Beckerath, *op. cit.*, pp. 9, 31; von Beckerath, *Zwangskartellierung oder freie Organisation der Industrie*, Stuttgart, 1918, pp. 32 f., 35 ff.; Siegfried Tschierschky, *Zur Reform der Industriekartelle*, Berlin, 1921, pp. 33 ff.; F. Bruck, *Geschichte des Kriegsausschusses der deutschen Baumwollindustrie*, Berlin, 1920, pp. 97 ff.; Claren, *Die Zusammenlegung in der deutschen Tuchindustrie*, Berlin, 1919; R. Liefmann, *Die Kartelle in und nach dem Kriege*, Berlin, 1915; W. Troeltsch, *Die deutschen Industriekartelle vor und seit dem Kriege*, Essen, 1916; Karl Pribram, *Cartel Problems*, Brookings Institution, 1935, pp. 241 ff.

¹⁷ In his article, "Cartels and the Business Crisis" (*Foreign Affairs*, October 1931, pp. 34-53), Louis D'Amatzy deals with the different functions of cartels in Germany in different economic periods.

no more than a kind of planning enacted for the protection of the German economy weakened by the war and the Treaty of Peace. Despite far-reaching plans covering all industries, the real power of the government went no further than the organization of coal and potash, whereas the legal fundamentals pertaining to iron and electricity never obtained practical significance.¹⁸

Cartels regained a private capitalistic activity but did not control regulation of the markets.¹⁹ As a matter of fact, the economic situation in that period defied any attempt at market regulation. Every owner of goods was a monopolist, as demand was still far larger than supply; and inflation made it impossible to control prices. In this period, cartels were committees for the aid of helpless businessmen; they advised selling terms to avoid inflation losses; they helped their members to shift the risks of the catastrophic currency movement to weaker parts of the economy, which were naturally, at such a time the purchasers of wares. Though in the spring of 1920 cartels had the opportunity to exercise genuine cartel functions by keeping prices high during a market decline, it was especially the rigor of the selling terms which they proposed that excited dealers and consumers, and led to the special law against cartels.²⁰

Although the cartels were vigorously attacked, they were, in fact, secondary in importance to the giants of capitalistic concentration. This concentration may be divided into two groups: (1) vertical integration for the purpose of rationalization, and (2) concentration for currency or speculative purposes. The former group sought to replace the raw material sources or markets lost through the War. War and inflation profits and government subsidies enabled industries to provide for installation and equipment maintenance of machinery without facing financial difficulties. The second group, which the writer prefers to call accumulation, rather than concentration, was an inorganic, circumstantial collection of values for the sole purpose of escaping the currency destruction. These accumulations have been called "department store concerns" and the mentality from which they sprang "concernitis." Here we may use Andrew Carnegie's phrase: "they threw cats and dogs together and called them elephants."

The character of the concentration movement of that time may be described as follows: there was no transition from cartel to trust tendencies; cartels, though increasing in number, were less important than the capitalistic concentrations, which were mostly integrations largely diverted to tasks foreign to their nature and used, not as a means against ruinous competition nor as market control, but as a defense against unpredictable economic events. The trend toward normality, especially stabilization of currency, credit restrictions,

¹⁸ Walther Rathenau, *Neue Wirtschaft*, Berlin, 1918. *Aufbau der Gemeinwirtschaft*, Denkschrift des Reichswirtschaftsministeriums (Deutsche Gemeinwirtschaft, Heft 9, 10 Jena 1919). G. Gotbein, *Planwirtschaft*, Berlin, 1919; R. Calwer, *Gebundene Planwirtschaft*, Berlin, 1919. Bericht der Sozialisierungskommission vom 31. Juli 1920, Berlin 1920. *Wissel-Striemer*, Ohne Planwirtschaft kein Aufbau, Stuttgart, 1921; v. Beckerath, *op. cit.*, pp. 18 ff.; F. Kestner and J. Lehnich, *Der Organisationszwang*, Berlin (1927), pp. 210 ff.; Fritz Naphtali, *Wirtschaftsdemokratie*, Berlin, 1928, 35 ff.; L. Mises, *Die Gemeinwirtschaft*, in *Grundstatistischen Untersuchungen unter Ablehnung einer Gemeinwirtschaft*, Jena 1932.

¹⁹ See Saltzow, *op. cit.*, p. 26; v. Beckerath, *op. cit.*, pp. 32 ff.; Tschierschky, *op. cit.*, pp. 44 ff.

²⁰ Cartel Decree against the Abuse of Economic Power, November 2, 1923, changed June 14, 1923, July 15, 1933 (Reichsgesetzblatt 1923 I, 1067 ff., 1090; 1932, 289 f.; 1933 I, 487).

scarcity of liquid capital, led to the breakdown of these concentrations in 1924.²¹

RATIONALIZATION

The last period is that of rationalization.²² The overexpansion of capacity through the immense military demand during the war, the shift from war to peace manufacturing, the necessity of large exports under the pressure of reparation payments, and competition in world markets, caused industry to realize that the war isolation of the German nation had prevented technical progress and had weakened the competitive strength of German economy. When demand declined and increasing supply produced competition, cartels once more began to exercise their function of market regulation, serving in the finishing industries as offensive and defensive devices against the all-too-powerful raw material cartels. Moreover, resumption of international relations led to international cartels such as the Incandescent Lamp, Crude Steel, and Rail Cartels. Finally, the big trusts entered the scene. After the Dye Trust, there came trusts in the photo, wagon, linoleum, and brass-rolling industries. Since the struggle for raw materials or markets is no longer of first importance, the concentration movement has been impelled toward a horizontal concentration or combination.²³

EXTENT

Figures on the number of cartels and combines tell us little about the details of economic organization. An organization of such a combination of enterprises is a web of incorporeal values which cannot be portrayed by figures, even if figures were available. But in the field of cartels they are not available; we are dependent upon more or less correct estimations. But even the basis of estimation is vague. To the reticence of most organizations in disclosing their real aims and activities, is added the legal difficulty of definition: What is a cartel, and what a harmless trade association or branch association ("Fachverband")? Nevertheless, attempts have been made and the following data give a not too accurate view of the industrial cartels in Germany:

Year	Number	Estimated by—	Year	Number	Estimated by—
1865-----	4	Sombart.	1905-----	385	Government Enquete.
1875-----	8	Do.	1911-----	550-600	Tschierschky.
1887-----	70	Philippovich.	1922-----	1,000	Liefmann.
1888-----	75	Do.	1924-----	1,500	Reich Ass'n of German Industry.
1889-----	106	Do.	1925-----	2,500	Government.
1890-----	117	Sombart.	1930-----	2,100	Wagenführ.
1895-----	143	Bricher.			
1896-----	250	Sombart.			
1900-----	300	Central Ass'n of German Industry.			

²¹ The most notorious of these speculating economic condottieri were Castiglioni Stumm, Rheinhandel, Sichel, Kahn, and Stinnes.

²² The effects of the rationalization are discussed in connection with the "Enquetebericht." (See p. 54.)

²³ It seems advisable to omit the development of the Labor Movement, although it is closely connected with the industrial organization. A compact description is in the writer's "Kartellrecht," pp. 65 ff.

The comparison of the 1905 estimate of the Government Enquete and that of 1924 of the Reich Association of German Industry, with respect to particular industries, shows this picture:

Industry	1905	1924	Industry	1905	1924
Mining.....	19	51	Paper.....	6	107
Iron.....	62	73	Glass.....	10	20
Metal.....	11	17	Brick.....	132	108
Chemical.....	46	91	Stone and earthen.....	27	30
Textile.....	31	201	Food.....	17	49
Leather and rubber.....	6	46	Electric.....	2	56
Wood.....	5	44			

This chart, even if it were unquestionably correct, would be incomplete without a word about the so-called "Spitzenverbände" (Central-federations). When the German organizes, he does it thoroughly. The German industry has its formation like an army. Just as the obstinate non-member of a cartel was considered almost as a deserter, so a cartel on its part had to be a member of a larger organization. The following federations devoted to various economic purposes were engaged in cartel problems, and had particular cartel departments:

Reich Association of German Industry.

Reich Association of German Wholesale and Export Trade.

Central Association of German Banks and Banking.

Central Association of German Retail Trade.

Association of Trade Mark Manufacturers.

These and many others combined in the Central Association of the Associations of Enterprises.

The Reich Association of German Industry was the most powerful and active organization, with a cartel department that exercised almost official influence. The efficiency of its experts, no less than the broad powers of the association, secured to it a dominant position in all cartel matters. The scope of its activities included:

- I. Research, consultation, and archives with valuable publications, especially reports of the decisions and opinions of the Cartel Court.
- II. Cartel policy: Defense of cartels, in general and particular, against unjustified attacks; elaboration of cartel principles; law enforcement; representation of industrial interests.
- III. Cartel arbitration boards according to the different parties in interest: Controversies between industrial cartels, between retail trade, and industry; between cartels and single firms; between industry and export trade; between cooperative marketing associations, wholesale and retail trade, and industry.

The Reich Association of German Wholesale and Export Trade also had a cartel department especially for the purpose of compromising disputes within wholesale associations and between these and others, and worked together with the Reich Association of German Industry.

The Central Association of German Banks and Banking was initiated by the so-called "Stamp Association" (an association of banks originally founded in 1883 in order to procure judicial decisions on doubtful questions of the Reich Stamp Act of 1881). The most important cartel agreement was the "General Agreement of Association

of Banks and Bankers" with the purpose of "fixing reasonable terms for the chief banking transactions * * * in order to eliminate the disadvantageous consequences of a harsh and unlimited competition * * *"

The Central Association of German Retail Trade devoted itself to cooperating with industry and wholesale trade in order to obtain a decrease in prices and it was particularly interested in the protection of a policy for the maintenance of resale prices of trade-marked articles.

The Association of Trade Mark Manufacturers had no cartel functions; it was designed for the purpose of giving manufacturers of trade-marked articles aid and protection against the unfair competition resulting from price-cutting.

SPECIAL INDUSTRIES

*Railways.*²⁴

Since nationalization took them out of the competitive field at an early stage, we may disregard them.

*Shipping.*²⁵

Not only was German shipping not nationalized but moreover it has never received subsidies from the German government. The two largest shipping corporations in the world, the HAPAG in Hamburg and the North German Lloyd in Bremen, were private enterprises. They were closely tied together by a 50-year community contract made in 1930 with one board of directors and two supervisory committees, with a profit pool and a loss compensation. Internationally, they and the other leading German shipping lines were in close contact with American shipping pools and the shipping conferences of lines on other maritime routes. In inland shipping there is not a single line which is not a member of one or the other cartel.²⁶

*Mining Industry—Potash.*²⁷

Very early a close syndicate was established in central Germany imposing uniform sales terms on its members. When new potash discoveries made the potential output exceed any possible demand, and many new works rapidly arose,²⁸ the syndicate was faced with destruction, since the management held prices high despite overproduction and the old enterprises desired to withdraw. The Reich, however, intervened and created a compulsory syndicate in 1910. The following years witnessed a further increase in number of enterprises, the price and investment policy became worse, and in 1919 the socialization law regulated the potash industry with the result that the potash syndicate comprised of three powerful members

²⁴ An extensive study of the German Railway system by MacMahon and Dittmar appears in the Political Science Quarterly, December 1939 and March and June 1940.

²⁵ See Die deutsche Rheinschiffahrt, Opinion of the Rhine commission on the situation in the Rhine shipping and its employees, by B. Harms, B. Kuske, O. Most, Berlin, 1930; L. Wertheimer, Die wirtschaftlichen Grundlagen der Donauschiffahrt, Wien, 1930; Horst Wagenfuhr, Verkehrskartelle in Deutschland, in Zeitschrift für Verkehrswissenschaft, 1931.

²⁶ See details in Wagenfuhr, op. cit., p. 348.

²⁷ See for the time prior to the World War H. R. Tosdal, The Kartell Movement in the German Potash Industry, Quarterly Journal of Economics, Vol. 28, pp. 140-190. For later developments see also T. J. Kreps "The American Potash Industry" Journal of Economy and Business History, 1931, Vol. 3, p. 630, pp. 653-8. In German: "Die deutsche Kaliindustrie"—Spezialarchiv der deutschen Wirtschaft, Berlin, 1930; Enquetebericht III, Die deutsche Kaliindustrie, Berlin, 1929; Opinion of Socialization Commission, 1921; W. Hoechstetter, Kontingentwirtschaft in der Kaliindustrie, Halle, 1927; R. Liefmann, Kaliindustrie, Handwörterbuch der Staatswissenschaften, 4th edition, 1923; W. Musold, Die Organisation der Kaliwirtschaft, Berlin, 1926; H. Paxmann, Die deutsche Kaliwirtschaft in kritischer Beleuchtung, Berlin, 1929; Verhandlungen der Sozialisierungskommission über die Kaliwirtschaft, Berlin, 1921.

²⁸ The Socialization Commission counted 4 potash enterprises in 1880; 8 in 1890; 15 in 1900; 65 in 1909; 68 in 1910; 194 in 1914 (see Wagenfuhr, op. cit., p. 53).

(1) the "Kaliblock" (potash group consisting of the five members: Salzdettfurth, Aschersleben, Westerzeler, Burbach, Kali-Chemie A. G.) (2) the Wintershall group, both controlling more than 90 percent of the potential output, and (3) the "Preupag," the Prussian State mines, representing less than 6 percent of the total. The two formerly large groups finally adjusted their output to the demand, and the large majority of less productive works lay idle.

*Coal Industry.*²⁹

The organization of the coal industry shows the beginning of the cartel movement. In the first, as in the second period of the cartel booms, the coal-mining associations were foremost: In 1875 and the following years the Ruhr district saw various kinds of combinations, particularly among the heavy industries, forwarded by the protectionist tariff act of 1879. After 1895 the same movement appeared in the Rhineland and Westphalia. The following years brought about vigorous clashes between the strong opposing interests of the different syndicates.

In the hard coal areas we find four different forms of organizations: Very closely organized coal syndicates in the lignite mines with independent wholesale trade in the Rhineland; rather closely organized syndicates with dependent wholesale trade in the Ruhr district, in close contact with the Aachen pits and the Saar mines, and in the Lower Silesia and Saxonia districts: Rather flexible price agreements in Upper Silesia; and finally in Central Germany a merely statistical and administrative office dominated by wholesale enterprises who were opposed to the formation of a selling agency.

Keen competition between all these organizations, not only in the so-called "areas of competition" ("Bestrittene Gebiete"), but internal dissensions so grave as to be overcome only by means of Government interference, serious difficulties through outsiders, divergence of interests between "pure" and "mixed" works (e. g. mines associated with smelting and steel works), etc., caused a development similar to that which occurred in the potash industry; e. g., in the Ruhr very few members produced less than 1,000,000 tons a year, whereas at the time of the founding of the syndicate (1893) some 90 percent of the members were producing less than that amount.

At an early stage (1906) the Government had tried to gain a foothold in the industry. Its first endeavors took the form of acquiring shares in the mine, Hibernia, and in the Rhenish-Westphalian district. In 1915, the Bundesrat prevented the break-down of the Rhenish-Westphalian Coal-syndicate by threatening to impose a compulsory syndicate unless a syndicate with 97 percent was established "voluntarily." This served as a regulation model for other districts. The socialization law (1919), originally designed to abolish private capitalistic economy in the mining industry, was a compromise between true socialization and public utility principles: This system has been called

²⁹ See Deutsches Bergbau-Jahrbuch; K. Borchardt, Die wirtschaftspolitische und organisationische Tätigkeit des Centralverbandes der Kohlenhandler Deutschlands, Berlin, 1920; Denkschrift des Finanzministeriums über die Lage des westfälischen Steinkohlenbergbaues, 1931; Enquetebericht III, Die deutsche Kohlenwirtschaft, Berlin, 1929; Finkensiep, Der rheinisch-westfälische Kohlenbergbau unter Berücksichtigung seiner Sozialisierung, Wuerzburg, 1920; W. Hecht, Organisationsformen der deutschen Rohstoffindustrien-Die Kohle, München, 1924. Holling-Pinkernell, Die deutsche Bergwirtschaft der Gegenwart, Berlin, 1928; H. Lütjens, Das rheinisch-westfälische Kohlen Syndicat in der Vorkriegs-Kriegs und Nachkriegszeit und seine Hauptprobleme, Leipzig, 1926; O. Scheer, Das Niederlausitzer Briquetsyndicat, Berlin, 1920; E. Schmalenbach, Gutachten über den rheinisch-westfälischen Steinkohlenbergbau (opinion delivered to Reich Economic Ministry), Berlin, 1928; Verhandlungen der Sozialisierungs Commission über den Kohlenbergbau 1918-1919, 1920, Berlin, 1920 or 1921.

an association of private enterprises with public rights and duties ("System privatrechtlicher Unternehmerverbände mit öffentlich-rechtlichen Befugnissen und Pflichten").³⁰

*Iron and Steel Industry.*³¹

Powerful capitalistic concentrations paved the way for a successful cartel organization. Four problems typify the sharp conflicts in this industry: (1) Contrast in the interests of "pure" and "mixed" works, (2) regulation of quality products, (3) collaboration between the producing and the manufacturing industries, and (4) complicated trade problems.

The contrast between "pure" and "mixed" works is manifested not only in the economic superiority of the latter but even more in the struggles for control within the cartels. The vertically organized concern seeks to exclude outsiders who undersell. Its competitors are the "pure" works, and it is interested as a purchaser of raw materials in being independent of market price fluctuations, while in its capacity as a producer of raw materials it is interested in being allied in a cartel with outside suppliers, the "pure" works. That may result in making the concern a member of many cartels. Thus it is the tragic function of cartels to pave the way for the vertical combinations by securing for them favorable working conditions. Within the cartels, the competition between the "mixed" and "pure" works sometimes clothed itself in a form that led either to absorption of the "pure" works by the "mixed" works, or possibly to a permanent struggle for quotas, voting power, and influence upon the cartel management. It was particularly the problem of "unrestricted use for self" which gave these cartels a character quite different from those which were designed to secure a peaceful cooperation of enterprises in the same industry.³² In the crude iron industry, the Crude Iron Association had as one of its primary functions sustaining the pure works in business. The regulation of quality products has on the whole failed up to now, although in the post-war period the cartelization of certain quality products succeeded. The "Stahlwerksverband" (Steel Works Union) as a close syndicate combined the larger enterprises of the heavy iron industry pertaining to mass products (so-called A products), whereas the Rheinisch-Westphalian enterprises were combined with those of Upper Silesia and the coast, with respect to quality production (B products). The "Rohstahlgemeinschaft" (Crude Steel Association), created after the war, embraced in a loose association only works engaged in mass production. The "Arbeitsgemeinschaft der eisenverarbeitenden Industrie" (Association of the Iron Manufacturing Industry), including particularly the machinery and small iron industries, banded together members with different and conflicting interests. The trade problem is characterized by the unsuccessful campaign of dealers for their independence. The number of dependent dealer groups ("Werkshandel")

³⁰ For details of structure, see commentaries on the mining law.

³¹ See: F. Beckmann, Der Zusammenschluss in der westdeutschen Grossindustrie, Köln, 1921; P. Bergmann, Die Kartelle im Eisenerzbergbau und in der Roheisenindustrie seit 1914, Jena, 1923; P. Barkendkopf, Die Neuorganisation der deutschen Grosseisenindustrie seit der Währungsstabilisierung, Essen, 1928; Die deutsche Eisen- und Stahlindustrie, Spezialarchiv der deutschen Wirtschaft, Düsseldorf, 1930; Enquetebericht, see infra note * * *; F. Hübener, Die deutsche Eisenindustrie, Leipzig, 1923; W. Krüger, Die moderne Kartellorganisation der deutschen Stahlindustrie, Berlin, 1927; K. Kühl, Avivertrag in der Maschinenbauwirtschaft, Vol. 4, p. 18; K. Malcher, "Die Syndicatsfrage in der oberschlesischen Eisenhüttenindustrie in der oberschlesische Wirtschaft, Vol. 1, p. 3; Mannser, Der Stahlwerksverband, Leipzig, 1911; Reichert, Die deutsche Rohstahlgemeinschaft, in 17 Montanindustrie Rundschau 1; P. Ufermann, Der deutsche Stahltrast; O. Wiskott, Eisenschaffende und eisenverarbeitende Industrie, Bremen, 1929; E. Wolff, Die Unternehmungsorganisation in der westdeutschen Eisenindustrie, Berlin, 1930.

³² The writer tried to show the significance of this problem for the cartel movement in the heavy industries in his "Kartellrecht"; see index: "Werke, reine oder Gemischte."

has increased, making many formerly independent dealers mere agents of the industry. The discrimination between "legitimate" and "illegitimate" dealers has been a source of coercion and a bar to free access to the trade. Concerns of the steel industry, the largest of which is the "Vereinigte Stahlwerke A. G." (Combined Steel Works Corporation) are practically independent of the market because they either possess sufficient resources of their own, especially in coal, or have secured their necessary materials through the medium of long-term delivery contracts with foreign mines. By increasing the number of their products they succeeded in balancing the market conditions. The monopoly situation—one may safely say that approximately six giant concerns dominated about 80 percent of the German iron production³³—may be shown by the following data.³⁴ Around 1930 in the pig iron industry 3 of 28 enterprises produced 68 percent of the whole output, 3 others 15.2 percent; the small percentage of 3.6 was divided among 13 enterprises with an output of less than 100,000 tons. In blocked crude steel, out of 49 separate producers, 4 were responsible for 68.3 percent of the total output, each turning out over 1,000,000 tons; 3 others, each producing between 500,000 and 1,000,000 tons, represented 12.2 percent; and 26, with less than 80,000 tons each, represented 2.7 percent. Out of 22 enterprises in the semifinished goods of the steel rolling industry, 3, each with over 150,000 tons production, produced 80 percent of the entire output. In rolling mill finished products, out of 59 manufacturers, 3, each with over 700,000 tons production, accounted for 55.8 percent of the whole; 4, each with between 450,000 and 700,000 tons, represented 19.4 percent; 33, each with less than 50,000 tons, accounted for 4.4 percent. But any statistical picture is incomplete unless it shows whether the industrialists mentioned are really independent or are secretly combined with each other. For instance, the Vereinigte Stahlwerke A. G. owns a majority of the stock of the Mitteldeutsche Stahlwerke A. G., which in turn owns a majority of the stock of the steel works and rolling mills in Central Germany. Moreover, the Mitteldeutsche Stahlwerke A. G. owns a majority of the stock of the Vereinigte Oberschlesische Hütten A. G., which comprises the main part of the enterprises of another large production area.³⁵ The interests of the Vereinigte Stahlwerke A. G. in different associations may be stated thus:³⁶

Association	Percent	Association	Percent
Pig Iron Association.....	48. 47	Rolled Wire Association.....	38. 75
Steel Ingot Syndicate.....	46. 82	Heavy Plate Association.....	47. 13
A-Products Association.....	48. 96	Tube Association.....	50. 2
Bar Iron Association.....	41. 94	Coal Syndicate.....	35. 84
Flat Bar Association.....	48. 59		

*Chemical Industry.*³⁷

The conditions of the chemical industry differ from others discussed here in that the chemical industry includes many different branches

³³ Wagenfuhr, op. cit., p. 63.

³⁴ See Committee for the Investigation into the Conditions of Production and Distribution in German Industry (Enqueteausschuss), E 20, pp. 37 ff.

³⁵ Ibid., p. 31.

³⁶ See Robert Liefmann, *Cartels, Concerns, and Trusts*, Methuen, London, 1932, p. 253.

³⁷ See B. H. Barg, *Die Explosivstoffindustrie*, Hamburg, 1929; L. Bauer, *Der Zusammenschluss in der deutschen Petroleumindustrie, in Wirtschaftskurve*, 1925, *Die chemische Industrie des Deutschen Reiches*, issued by Associations of the Chemical Industry, Berlin, 1930; *Enquetebericht III: Die deutsche chemische Industrie*, Berlin, 1930; C. Hurth, *Die deutsche Zuendholzindustrie in der Nachkriegszeit*, Jena, 1929; T. Langen, *Der Benzolverband*, Halle, 1929; "Die deutsche Mineralölindustrie und verwandte Teerproduktionsbetriebe, published by Zentralverband von Mineralöl-Handel & Industrie E. V. und Herzenberg, Leipzig & Berlin, 1929.

of industrial activity which utilize chemical methods of production. All industrial production consists either in a change of formation or in a change of material. In the branches of mechanical production, original material is merely changed in form; e. g., machines are made from iron, textiles from animal or vegetable fibres. In chemical production, however, the very substance itself is changed. This, consequently, exists as the only common feature of many quite dissimilar branches of the chemical industry, e. g., pharmaceuticals, cosmetics, explosives and powders, benzol, soaps, matches, artificial fertilizer, dyestuffs, synthetic silks, photographic supplies, etc., etc.

In this very compact survey then we can touch only upon a few of the more important economic problems, and this in broad generalization.³⁸ The chemical industry, more than any other, is constantly affected by new discoveries and new methods, consequently there is constant need for new mechanical inventions to adapt equipment to technical progress.³⁹ It is impossible to protect these processes and inventions adequately by patents. This led to the wave of rationalization and combination of similar enterprises, since only a capitalistic community of interests permitted the interchange of experiences and discoveries, and further acted as a shield against breach of confidence.

In the post-war period the chemical industry suffered from a loss of markets because of the increased productive capacity in many countries, high protective duties (especially in England) and foreign trade monopolies (e. g., in Russia); furthermore, overproduction was inevitable since the war demand for explosives had led to a large expansion of capacity. Hence, rationalization became an urgent necessity. For the chemical industry rationalization such as that occurring in the mining or machine industry, i. e., through an improvement of production methods or through labor cost saving, was an impossibility, since most of the chemical process requires little human labor. The most efficient way to reduce costs was to combine enterprises with like production methods and to allot production to the best-equipped establishment. Thus in the I. G. Farbenindustrie A. G., products formerly made in eight separate factories now were produced in only one or two. For instance, "indanthren" dyestuffs were made exclusively in Ludwigshafen, wool and silk dyestuffs only in Hoibst.

Concentration grew, however, for reasons inherent in the chemical industry. In mechanical industries the production of one branch is, as a rule, clearly differentiated from other branches, a demarcation which is sometimes, as in the mining and iron industries, diminished by concentration. In the chemical industry, however, a rigid specialization of production, e. g., with respect to the last use, is impossible. The chemical industry involves multitudinous combinations of elements or components, and various enterprises limit themselves to the production of certain articles only because no plant can engage in the production of all possible products. Choice is made difficult because there is a very close connection between different branches and methods of this industry. Then there is a lower range of problems peculiar to the chemical industry; for instance by-products and waste

³⁸ To the following see Enquetebericht "Die chemische Industrie" which in almost every chapter emphasizes the impossibility of detailed representation.

³⁹ As to the "Chemical revolution" or the "Chemical Phase of the Industrial Revolution" see T. J. Kreps, Chemical Industry, in Encyclopedia of the Social Sciences and The Economics of the Sulfuric Acid Industry, Stanford University Press, 1938; also W. Haynes, Chemical Economics, 1933.

products may become end-products like all the others; experience, discoveries, and inventions are mutually interchangeable; nearly all products are at once both marketable and susceptible to use in further production; etc. A diversity of production is the only protection against the risk of obsolescence.

These circumstances explain why in all countries with a large chemical industry the enterprises are of tremendous size, both with respect to the number of factories and the variety of articles produced.⁴⁰ Regarding the selling organization, it must be adapted to a number of markets since nearly every product has a different group of customers. There is a large wholesale and retail trade, but also a direct contact between industry and ultimate consumer. In view of the nature of the merchandise the producer must inform the ultimate consumer as to transportation (gas and explosives), storage (change of temperature), use (poison), etc. The widespread use of trade-marked articles, particularly in the pharmaceutical, cosmetic, and photographic industries is another reason for such immediate contact.

The cartelization net is tight,⁴¹ the cartels—of which the Nitrogen Syndicate⁴² and the Selling Association for Tar Production are the most important—are predominantly “syndicates.”⁴³ Besides, the industry is organized in a general central federation, the “Verein zur Wahrung der Interessen der chemischen Industrie Deutschlands” with numerous local branches. Although there were some independent enterprises left, competition has been almost eliminated.

Banks and Industry.

It has been explained⁴⁴ that in Germany the banks, particularly the joint stock banks, were not only credit organizations but were also “politico-economic instruments,” as typical of German mentality as the large scale enterprises, trade unions, or cartel syndicates, and that it was due to the power and credit policy of the great banks that German industry grew into powerful capitalistic concentrations and cartels. In the last half of the preceding century, the banks, through an accumulation of capital due especially to the import of precious metals and the use of the banks as depositories, began to exercise power over industry which they aided in the stormy rush to concentration.⁴⁵ In their role as underwriters, creditors, holders of

⁴⁰ The structure of the giant German Dye Trust, the I. G. Farbenindustrie A. G. is (according to Liefmann, *op. cit.*, pp. 316 ff.) as follows:

I. At the time of its foundation: 13 key firms; 5 firms for artificial fertilizers and agricultural requisites; 5 chemical factories; 9 electro-chemical and metallurgical factories; 18 coal, brown coal, and oil works; 3 works for compressed gases; 5 textiles; 10 foreign marketing companies; 5 various.

II. Later: Relationship with the largest German artificial silk firms and, partly through these and partly direct, with the English Courtaulds Ltd. and the American E. I. du Pont de Nemours & Co., relationship through the newly acquired explosives concern with the English Nobel Dynamite Co., relationship with the Norwegian Norsk Hydro Elektrisk Kvaestof A. G., relationship with the Standard Oil group and the Royal-Dutch Shell group, relationship with Ford Motor Co. Financing companies are: The Swiss Internationale Gesellschaft für chemische Untersuchungen and the American I. G. Chemical Corporation.

III. The varied products of the trust are divided up into 5 different groups: (1) dyestuffs, (2) nitrates, (3) pharmaceutical and pest destruction products, (4) photographic products and artificial silk, (5) inorganic and intermediate products.

⁴¹ According to the opinion of Dr. Bosch in the Enquete hearings, the Dye trust was a member of no less than 70 cartels. (See Enqueteausschuss, E 19, p. 133.)

⁴² This syndicate in 1925 embraced 75 percent of the industry; in 1926, 99 percent; in 1930, 98 percent; which meant 5 members: I. G. Farben, Bayerische Stickstoffwerke, Deutsche Ammoniak-Verkaufsvereinigung, Kokswerke & Chem. Fabriken A. G., Wirtschaftliche Vereinigung deutscher Gaswerke Gas Koks-syndikat A. G.

⁴³ See *supra* note 13.

⁴⁴ W. F. Bruck, Social and Economic History of Germany from William II to Hitler, 1888-1938, Oxford University Press, 1938, pp. 80 ff.

⁴⁵ J. Riesser in The German Great Banks and their Concentration (Washington, 1911) remarks: “The German banks have used their resources and their organization in a one-sided and excessive manner in the interests of trade and industry and too little in the interest of agriculture” (p. 223).

large blocks of shares, proxies for their customers, and members of supervisory councils (in many cases as chairmen of a great number of those councils), their influence can hardly be exaggerated. But ignorance of correct principles, a certain megalomania in borrowing as well as in lending, were the reasons why banks were willing to extend to industry too much long-term credit—often at the wrong time and for wrong purposes.⁴⁶ This effervescent enthusiasm, with a good portion of speculative spirit, led to the vicious circle in which borrower and lender were dependent upon each other. It used to be said: "The more you borrow, the safer you are." Finally, the bank became the entrepreneur itself since it could not withdraw its credit without positive danger of loss, and the enterprise could never change its bank. As the collapse of their debtors was not to the interest of the banks, they used the whole of their influence to bring industry into the haven of peaceful understanding and stable prices. "So banks often succeeded in breaking the resistance of individual undertakings to a combination"⁴⁷ having "the power to coerce their customers into joining cartels or special combinations."⁴⁸ When industry grew, particularly in the turbulent post-war times, the joint-stock banks could no longer cope with this size. The powerful integrations and concentrations of that time created a new financial device, finance or joint stock capitalism, which consisted in mutual exchange of blocks of shares in the various enterprises. In these transactions, again, the banks played a role⁴⁹ so important as to justify the statement that to write the history of Germany's great banks, one would have to write the history of her big industrial trusts.

LEGAL DEVELOPMENT OF THE CONCENTRATION MOVEMENT

The cartel movement⁵⁰ in Germany began to a major extent, as we have seen, after 1873.⁵¹ At that time there was no statute specifically directed against cartel agreements. The first and fundamental decisions of the German courts were based almost without exception on economic considerations favorable to those associations. In the first case⁵² where an association of Bavarian kiln owners, formed for the purpose of "checking the decline of their industry by regulation of production and prices," brought a suit against a member who had violated the agreement by producing and selling in excess of the quota, the Bavarian Supreme Court held that it would be "incumbent upon prudent businessmen belonging to a branch of industry which is suffering from a depression to get together and enter into agreements regulating the ways and means of operating their industry with a view to promoting recovery." The defendant was so overwhelmed by this argument that he reduced his attack to the contention that the purpose of the association, as stated in the bylaws,

⁴⁶ Riesser, *op. cit.*, p. 230. Felix Somary, *Bankpolitik*, Tuebingen, 1930 (2nd ed.), refers to H. G. Moulton in saying that the American Bank system has much in common with the German system despite some odds and epitomizes "The German and partly also the American banks are active, purposeful guides in the employment of capital, the English most neutral, indifferent moneygivers" (p. 272).

⁴⁷ Bruck, *op. cit.*, p. 86.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*, p. 89.

⁵⁰ There is no law in Germany controlling forms of business organization other than cartels.

⁵¹ In German see Callmann, *op. cit.* Excellent discussions in American law journals written by J. Wolff, *Tulane Law Review*, April 1935, p. 325, R. Wolff, *Iowa Law Review*, January 1936, p. 355.

⁵² Bavarian Supreme Court of April 7, 1888, in Reports of this Court, Vol. 12, p. 67 (Kiln Owners Association).

was not the real one, and that there had been a substantial rise in prices as a result of the cartel. The court, however, dismissed the argument by saying that the inference was unwarranted. Although, as is the case in the economic literature of all countries, the views of German economists are, and always have been, extremely widely divided, we find a surprising boldness in economic theories like these:

Overproduction is disastrous for an industry, especially when market price drops below production cost so that *every effort* to eliminate overproduction is directed at an economic evil and is, therefore, to be commended. Since the individual producers are powerless to restore the proper balance between supply and demand by limiting their own output, the *only way* to bring about such result is for them to combine and agree on such limitation. [Italics supplied.]

In a subsequent suit brought by the same cartel against another member the same court argued: ⁵³

Experience teaches that the more the price of goods advances, the more insistent will be the demands of labor for higher wages, and the more easily will manufacturers be able to meet these demands; on the other hand, a depressed trade yielding little or no profit will immediately react adversely on the wage level and must eventually lead to the shutting down of plants or the curtailment of their operations, thus causing serious injury to the workers employed therein.

Then, we come to the first cases in which the German Supreme Court held cartel agreements legal. It approved both the system of resale price fixing for trade-marked articles and the boycott ("Sperre," bar) against outsiders.⁵⁴ The most important and decisive case for the entire period up to 1923 was that of 1897. It dealt with the cartel of Saxon woodpulp manufacturers formed by a "substantial" number of the manufacturers for the purpose of "stopping ruinous competition and of securing a reasonable price for their products." The court rested its decision upon the following economic reasoning:

When the prices of the products of an industry fall to an unreasonably low level and the profitable operation of the industry is thereby endangered or made impossible, the resulting crisis is detrimental not only to the individuals affected, but also to the national economy as a whole, and it is, therefore, to the interest of community that prices should not be constant at an unreasonably low level.⁵⁵

The *legal* arguments of the courts were derived from two points of view; one was the problem of whether the German law was based upon the principle of free competition, in the sense that the law will endeavor to preserve competition; the other raised the question of whether the cartel agreement proper, in the light of the circumstances of the particular case, violated sections 138 and 826 of the German Civil Code of 1900, declaring contracts against public policy to be void and allowing damages for intentional injuries.

The former question was disposed of by the Court ⁵⁶ in distinguishing two aspects of the problem: first, whether a cartel contract violates the principle of freedom of trade as laid down in the statute of 1869/1871 regulating trade and commerce "insofar as the lawgiver sought to promote the interests of society in general through freedom of trade"; and, second, "whether the personal liberty of the individual is impaired by such contracts in a manner contrary to the law."

⁵³ Dec. 27, 1888, *Ibid.*, p. 22.

⁵⁴ Decisions of the German Supreme Court of June 25, 1890 (volume 28 RGZ, p. 244), and of February 4, 1897 (volume 38 RGZ, p. 155; Saxon woodpulp case).

⁵⁵ In none of the decisions is any mention made of possible disadvantages of cartels, although today, as is the case with so many other economic problems, the discussion is in a highly controversial stage.

⁵⁶ This problem was particularly discussed in the Saxon Woodpulp case (see 38 RGZ, pp. 156 ff.). For an elaborate examination of this case, see J. Wolff, *op. cit.*, pp. 330 ff.

Both questions were answered in the negative, although it is expressly mentioned that this view is not in harmony with others "especially held outside of Germany."

As to the first question, the Court reasoned that freedom of trade was introduced not only in the interest of the individual, but also in the interest of society and that a combination of individuals "in the interest of society" is not contrary to this principle. The public interest, however, requires that businessmen combine when prices are so low as to threaten ruin; thus, the combination has to be considered a legitimate means of self-preservation. In only one case could the contract not be enforced, i. e., "where the purpose of the combination is to create a monopoly and to exploit the consumers, or if monopoly and exploitation of consumers actually result from the operation of such combination." This was found not to be the case.

As to the second question, the courts have held that Section 1 of the statute regulating trade and commerce⁵⁷ should not be so interpreted as to deprive the individual of the right to enter into contracts which restrict his conduct of his business, provided such restriction is only temporary and not permanent. This is practically the same as the Anglo-American law of restraint of trade prior to the Sherman Act.

It is not surprising that in these circumstances the courts also held in favor of the cartels under Sections 138 and 826 of the German Civil Code, concluding that neither the purpose of the combinations nor the methods employed by the cartels were *contra bonos mores*. This interpretation of these two sections to the effect that only intentional violation of ethical principles should be illegal, might account for the lack of specific findings, e. g., as to the causes that led to the alleged depressions in the respective industries, as to whether the market price had actually dropped below production cost, as to whether the rise in price caused by the cartel was reasonable. For acting against public policy could not be assumed unless one had acted in bad faith; hence, evidence of the good intentions of the cartelists would have been sufficient to support the favorable decision of the courts; unfortunately, however, even such evidence is lacking.⁵⁸

For about 30 years the judiciary fostered the industrial combination movement in this manner, so that when eventually public opinion clamored for a special statute against the abuse of power by cartels it was too late to forbid them altogether. This statute⁵⁹ introduced two innovations: (1) It laid down substantive law as to the possibilities of misuse of economic power. This, however, applied only to cartels, so that the title of the act, holding out prospect for a comprehensive statute regarding all monopolistic situations, was misleading. (2) The activities of the cartels were subjected to a new method of positive regulation and supervising, the weight of which was transferred from the judiciary to the executive branch of the Government, to the Cartel Court, a special tribunal which really was an administrative body, and to the Minister of Economics.

New cartel decrees arose out of the economic crises in 1930 and 1933. The Emergency Price Control Ordinance of July 28, 1930, gave the Minister of Economics power to declare price-fixing agreements void

⁵⁷ The section reads as follows: "Every person shall be free to engage in trade * * *."

⁵⁸ For a discussion of the effect on the decision of the economic and social views of the judges, as representatives of the dominant class in Germany, and the different philosophies of many groups favoring cartels, see Hearings before the Temporary National Economic Committee, Part 25, pp. 13354-13355.

⁵⁹ See *supra* note 20.

without resort to the Cartel Court. He could also lower or abolish import duties on cartel-controlled commodities.⁶⁰

From that time on, cartels lost their natural functions and, almost as during the World War, their form became subordinated to political purpose.⁶¹ As "Gleichgeschaltete," i. e., national socialized organizations, and as compulsory cartels they became means of a new administration, means of economic coercion for political purposes in the hands of a totalitarian state.⁶²

THE GERMAN TEMPORARY ECONOMIC COMMITTEE⁶³

The year in which the German counterpart of the T. N. E. C. was born, 1926, fell in perhaps the most dangerous period of Germany's post-war economy. An interim stabilization had been achieved. The Dawes committee was making an inventory of Germany's political, financial, and economic situation in order to reduce the reparations problem to manageable proportions. Foreign loans, according to the plans of this committee, were designed to stimulate the German economy. State railways were removed from the control of the Government, as were also the currency banks. In the midst of the general economic distress between two short periods of pseudo-prosperity⁶⁴ the "Enqueteausschuss" was established to inquire into the origin and the repercussions of the economic crisis.⁶⁵

The German Government charged this committee with inquiring into the production and market conditions of the whole German economy, in order to furnish a basis for fixing the German reparation payments.⁶⁶ The chief problems for consideration were to what extent was the economic depression caused by demand and supply conditions, respectively; was it possible that general conditions of production caused the economic stagnation; or could it be traced to a change in market conditions, i. e., shrinkage of domestic purchasing power, the immense changes in world markets, and especially by the disappearance of consumer areas which had turned to manufacturing?

⁶⁰ For the scanty use made of these measures by the Ministry of Economics see hearings before the Temporary National Economic Committee, Part 25, pp. 13357-13358.

⁶¹ For a detailed discussion of developments after 1933, see pp. 63-70.

⁶² See also F. Pitigliani, *The Development of Italian Cartels Under Fascism*, *Journal of Political Economy*, 1940, p. 375.

⁶³ "Enqueteausschuss"—"Ausschuss zur Untersuchung der Erzeugungs- und Absatzbedingungen der deutschen Wirtschaft." The reports and hearings are published by E. S. Mittler und Sohn, Berlin, from 1928-1931, in about 100 volumes. The 20 volumes which are of special importance to this study are referred to as follows:

E-1. Gesamtbericht (Summary & General Report) of the Chairman, Dr. Bernhard Dernburg.
E-2. Allgemeiner Teil, Band I: Ziele & Organisation des Enqueteausschusses.
E-3 and E-4. Allgemeiner Teil, Band II: Teil A and B: Britischer Enqueteausschuss für Industrie und Handel.
E-5. I. Unterausschuss, 1. Arbeitsgruppe: Die Einwirkungen der Gebietsabtretungen auf die deutsche Wirtschaft.
E-6. 2. Arbeitsgruppe: Die innere Verflechtung der deutschen Wirtschaft.
E-7. 3. Arbeitsgruppe: (I) Wandlungen in den Rechtsformen der Einzelunternehmen und Konzerne.
E-8. (II) Entwicklungslinien der industriellen und gewerblichen Kartellierung.
E-9. a. Arbeitsplan und Maschinenbau.
E-10 and E-11. b. Bau- und Baustoffindustrie. c. Textilindustrie, Teil A and B.
E-12. (III) Wandlungen in der aktienrechtlichen Gestaltung der Einzelunternehmen und Konzerne (Generalbericht).
E-13. (IV) Kartellpolitik, 1. Generalbericht (General Report).
E-14. 2. Vernehmungen (Hearings).
E-15. III. Unterausschuss, 1. Die deutsche Rohstoffversorgung der deutschen eisenerzeugenden Industrie.
E-16. 2. Die deutsche Kaliindustrie.
E-17. 3. Die deutsche Kohlenwirtschaft.
E-18. 4. Die deutsche Elektrizitätswirtschaft.
E-19. 5. Die deutsche chemische Industrie.
E-20. 6. Die deutsche eisenerzeugende Industrie.

⁶⁴ The first pseudo-prosperity was in 1924 due to the stimulus given by the Dawes Loans, the second in 1927, caused by the labor conflicts in British coal mining and rationalization movement in German industry, and the gradual reaccessibility of the world market for German products supported by a stream of foreign capital.

⁶⁵ Enqueteausschuss, E-1, p. 9.

⁶⁶ Enqueteausschuss, E-2, p. 16.

The Enqueteausschuss divided itself into five subcommittees: Subcommittee I inquired into the general economic structure; Subcommittee II, into special conditions in agriculture; Subcommittee III, into industry, trade, and handicrafts; Subcommittee IV, into labor problems; and Subcommittee V, into banking and finance.

Subcommittee I was again divided into a number of groups to which it assigned investigations with respect to economic and legal problems of domestic economy, as well as problems of the export trade, trade balance, and the consequences of territorial losses through the treaty of Versailles. The third of these groups devoted itself to "Transformations in the Comparative Formations of Enterprises" and to "Cartel Policy." In the foreground of its inquiries stood the joint stock company and the discrepancy between its statute and common law, the concentration movement in industry, and the problems of cartel state policy. The investigations of this group, both with respect to corporation law and cartel policy, were completed particularly by Subcommittee III concerning the iron and steel, potash, coal, electrical, and chemical industries.

The method of the "Enqueteausschuss" was similar to that of the T. N. E. C. Written opinions by experts on economics and law, and testimony of these and other leading personalities in practical business life, formed the basis of reports, augmented by questionnaires and other miscellaneous information.⁶⁷ After general discussions concerning the dissimilarities existing between the provisions of the Commercial Code of 1897 and practical developments based on court decisions, the committee dealt specifically with horizontal and vertical concentration in industry. Like the T. N. E. C.; it selected some representative concerns and investigated the following examples: the concerns of the iron industry, the electrical industry (A. E. G.-Allgemeine Elektrizitätsgesellschaft; Siemens Konzern), the I. G. Farbenindustrie (Interessengemeinschaft Farbenindustrie A. G.-F. G. Dyestuff industry, Joint Stock Company), the linoleum industry, and the department store concern Leonhard Tietz A. G.

COMBINATION MOVEMENT IN PRIVATE INDUSTRY

An extraordinary lessening of competition in food supply and raw materials spheres in the post-war period was not peculiar to German economy. Price regulatory methods changed, depending upon the product, the predominant forms of organization of enterprise, and the market situation. A goal common to all, to be achieved by regulation of production, was the elimination of the cause of over-supply, and the establishment of a stable price basis. Both associations of farmers and national and international trade associations, aided by state associations and finance-capitalistic methods, as well as by actions of domestic and foreign trade policies, attempted a total regulation of markets on a world-wide basis. All these attempts to control markets led to a far-reaching inelasticity of prices. The pressure of supply and enormous price fluctuations increased price risks to the entrepreneurs. This was particularly true in the textile industry, building material industries, and flour mill industry.

⁶⁷ E. g., see Enqueteausschuss, E-2, p. 18; E-7, p. 2; E-8, p. X; E-12, p. VII.

The details of this movement so far as it pertains to the combination movement of private industry itself (epitomized as self-government of business) may be discussed under the following headings: ⁶⁸

Goals and Effects of Concentration.

The goals and effects of concentration are, in the opinion of the committee, rationalization of enterprises with respect to their technical and commercial efficiency, in the interest of private capital and public economy.⁶⁹ Technical progress and economic crises, especially such extraordinary blows as those suffered by Germany in consequence of the World War, inflation, and the increased burden upon industry from outside and inside, favor this movement.⁷⁰ Horizontal combination—i. e., in the same line of production—is usually effected by joining corporations into a single, legally-unified enterprise.⁷¹ In cases of vertical combination—i. e., in different economic lines—the technical form of combination is, as a rule, either the so-called “association of interests” (*Interessengemeinschaft*),⁷² or the contract for lease of the business (“*Pacht-oder Betriebsueberlassungsvertrag*”). The statement in the report ⁷³ that “it is easier for a large combination of enterprises than for single small corporations to obtain agreements with trade and authorities,” implies that the convincing force in those conversations is the existence of economic power on the part of concentrated industry, rather than arguments as such.

The Economic Classification of Concerns.

Concerns are classified economically from two points of view: (1) The distribution of power within the combination which is economically a unit and legally a combination of independent enterprises; (2) the position of these legally independent enterprises in the scale of economic processes. The relation as to power may be that of coordination or subordination, and according to this we choose terms like “parent” or “daughter” corporation, “roof,” “key,” “control,” or “organ-” corporation. The position of the single enterprise within the scale of economic processes may be called horizontal or vertical. The committee, for example, compares the horizontal department store concern of Tietz, predominantly engaged in the distribution of goods, with the vertical steel concern, the activity of which covers the whole line of process from coal mining to the production of finished iron goods.⁷⁴

Form of Concentration.

The form of concentration may be achieved by means of the acquisition of shares, contracts, interlocking directorates, or by a combination of several of these. Considered first of all was the economic

⁶⁸ The committee deals fundamentally only with those forms of concentration in which the companies remain legally independent. The genuine merger (see p. 54) is mentioned in some special considerations of particular industries where economic peculiarities draw attention to a specific case. The combinations consisting of legally independent but economically dependent corporations are discussed in connection with the problem of how far the concentration movement caused the discrepancy between written and common corporation law, as mentioned above, and how far transformations of this law are the necessary consequence of the repercussions of this part of the combination movement. This problem is not connected with the subject matter of the American investigation.

⁶⁹ Enqueteausschuss, E-13, p. 67; E-14, pp. 373 (Thyssen), 374 (Volger), 405 (Deutsch), 437 (Bosch), 454 (Schaller).

⁷⁰ Enqueteausschuss, E-13, p. 67; E-14, p. 470 (Hazen).

⁷¹ The most remarkable examples in German industry are: Vereinigte Stahlwerke A. G., Siemens-Halske and Schuckert, Deutsche Linoleumwerke A. G.

⁷² The famous *Interessengemeinschaft* “I. G. Farben,” Germany’s paramount chemical trust, is a horizontal combination which originated from a cartel-like organization.

⁷³ E-13, p. 67.

⁷⁴ Enqueteausschuss, E-13, p. 66.

purpose, e. g. whether it was the best way to the most complete rationalization. Besides, there were legal problems such as voting rights, or the invalidity of contractual agreements with respect to the dissolution of a combination, or provisions of the corporation or taxation laws. And the report recognized that it was necessary to leave enterprises outwardly independent in order to enable them to act "independently" in the competitive struggle. If for example, A, the supplier, and B, the purchaser, are combined, purchaser C would not like to buy from A if he knew the relationship between A and his rival B.⁷⁵

(a) *The acquisition of stock* can be for the purpose of investment or of domination; we deal only with the latter. The degree of this finance-capitalistic transaction varies; sometimes the dominant corporation owns all the stock of the other ("one-man corporation"); in the case of "parent" and "daughter" corporation the leading corporation has obtained only a preponderant influence upon the other. In addition, there are minority interests. Moreover, the acquisition of stock can be unilateral or mutual, according to whether it is with or against the will of the management of the dominated corporation.

It has been discussed from the legal point of view whether it is possible to consider two economically combined enterprises as legally separate and independent. The German Supreme Court first held that the two corporations are legally, as well as economically, a unit ("theory of uniformity"), but in a later decision changed this opinion. This is the weight of authority. Practically, the theory of uniformity would lead to the result that the creditors of the dominant corporation are on equal footing with the creditors of the dependent corporation. Many problems with respect to different fields of legal consideration are open to question in this respect.⁷⁶

The advantage of this kind of concentration for capitalistic interest lies first in the possibility of obtaining with small means a decisive influence upon a large corporation by means of hooking up one holding-daughter corporation with another, each of which has a smaller capital than the large corporation, but owns an interest in it. Moreover, it is easy to invade a competitor corporation surreptitiously through acquisition of a large minority or even majority of stock. For taxation reasons, these kinds of entanglements were not so usual in Germany as in the United States.⁷⁷

In certain instances special corporations are formed for the sole purpose of managing the whole concern. Usually, it is the selling organization which is assigned to a legally independent daughter corporation. Those "organ corporations" do not strive for a profit of their own, but are established to serve the concern, the community, and its members; in this way the concentration movement has created a new type of corporation (joint stock corporation, or G. M. B. H.)⁷⁸ which has the form but not the function of the ordinary business

⁷⁵ See Enqueteausschuss, E-14, p. 432 (v. Siemens). See also E-13 p. 84, with respect to trade-marked articles. There is no hint either in the hearings or in the report to the effect that such a masquerade could be unfair competition.

⁷⁶ Enqueteausschuss, E-13, p. 72; see esp. Joseph Flechtheim's opinion, E-14, p. 40 ff.

⁷⁷ Compare the passage in the statement of August 23, 1940, by the President of the United States when he signed the Investment Company Act of 1940 with respect to the situation in this country: "During the 1930's, these corporate monstrosities had been permitted to pyramid stock holdings on top of stock holdings until a few men on the top, with only a microscopic investment of their own, could control the smallest action of those who ran the far-flung operating companies at the base of the pyramid."

⁷⁸ The "Gesellschaft mit beschränkter Haftung" is a corporation consisting usually of a few members who are liable only to the amount invested in the corporation.

corporation. These "organ corporations" are akin to the management or selling agencies of the cartels (syndicates).

(b) *Concentration through contract* is a contract providing for profit sharing or management, either with respect to the whole enterprise, to production, or to selling. The problems arising from those corporations have been of a legal nature, peculiar to provisions of the German corporation law, of little interest to the American reader.⁷⁹ Contracts for lease of the business have already been mentioned.⁸⁰ These are contracts usually made between a dominant and a completely subservient enterprise, where the relationship may be compared with that between employer and employee. They are used especially between a supplier of raw material and a manufacturer of finished or semifinished goods.

(c) *Interlocking directorates* are formed as a means of obtaining uniform administration, which is necessary wherever the legally independent enterprises form an economic entity. In most cases the parent corporation delegates members of its administration to the supervisory committee of the daughter corporation.⁸¹ Here the choice of form depends upon the personalities both of the controlling delegates and the controlled managers. According to the power relationship between the companies we may find unilateral or mutual exchange of directors. Sometimes there are regular meetings of the managers or supervisors of the combined companies, and in such a case concentration may be the first step in the formation of a merger.⁸²

(d) *Merger* (fusion) is the amalgamation of enterprises which thereby lose their economic and legal independence. The committee discussed at length the advantage of the fusion, and came to the conclusion that it alone made a radical rationalization possible, not only because such a revolutionary transformation is impossible under the menace of a potential dissolution, but also because only complete unity among persons working in the business can create a solidarity of interest and a common community spirit.⁸³

*Characteristics of Concentration.*⁸⁴

Concentration favors the rise of monopolistic market positions and is a form of collective monopoly between a cartel and a trust.⁸⁵

(a) *Rationalization.*—Rationalization was one of the prevalent motives of concentration.⁸⁶ What were its repercussions affecting the cost element of enterprises or industries, unemployment, and the structure of enterprises? The committee states with resignation that the experts testified "one-sidedly and mostly only according to narrowest interests, preponderantly employee or employer interests."⁸⁷

⁷⁹ For details, see Enqueteausschuss, E-13, p. 76 et seq.

⁸⁰ P. 3.

⁸¹ Under the German law, the Joint Stock Corporation is provided with two administrative bodies, the board of directors ("Vorstand") and the supervisory committee ("Aufsichtsrat"). The latter is elected by the general meeting of shareholders, the former generally by the latter. Functions are divided so that the directors are engaged in the regular work of the daily business life, while the members of the supervisory committee are expected to control general commercial development, and the status of the enterprise.

⁸² The committee discussed the interesting legal problem of how a member of a company board has to decide when some transaction is in debate which is disadvantageous to the company, but advantageous for the concern. The problem is by no means clear. See Enqueteausschuss, E-13, p. 81, Flechtheim opinion E-14, p. 32, and literature quoted therein.

⁸³ See Enqueteausschuss, E-13, p. 83; E-14, p. 405 (Deutsch), 434 (v. Siemens) 452 (Schoeller).

⁸⁴ The investigation into the advantages and disadvantages on the basis of the hearings pertaining to many industries can only be very superficial in the small scope of this chapter. A thorough examination would furnish material to fill a large volume.

⁸⁵ Enqueteausschuss, E-1, p. 22.

⁸⁶ Ibid. p. 8.

⁸⁷ Enqueteausschuss. E-1, p. 112.

The majority agreed that rationalization was important in order to free the German economy from cramped conditions of the post-war time and, we may add today, to make possible the tremendous rearmament afterwards. However, no agreement could be found on how far rationalization is possible and economical. It cannot be denied that improvements in technique and organization led to considerable cost saving in certain respects.⁸⁸ On the other hand, the savings were more or less offset by a precipitous increase of other cost elements; e. g., wage savings were balanced by increasing capital cost, investments for technical equipment, capital interests, etc.⁸⁹—or were shifted to the public in form of doles as unemployment increased as the result of the machine power superseding man power, etc.⁹⁰ The replacement of labor cost by capital cost led to the well-known appearance of overcapacity.⁹¹ The exaggerated application of a sound principle was due to two facts: the realization how far other countries, especially the United States, had emulated Germany in technical progress, and the supremacy of technicians over the economists with the result that technical rationalization was carried out according to the wishes of the former, without regard to economic considerations.⁹² In many an enterprise the management was put into the hands of engineers or other technicians who were not familiar with the market.⁹³

Worse perhaps than the increase of cost was the change in mobility, the change of variable into fixed cost.⁹⁴ Not only capital expenses belong to the latter category, which is independent from market movements, but even labor costs became more and more fixed under the influence of rationalization, and of the labor movement.⁹⁵ The elasticity of production apparatus, however, is more important in a country largely dependent upon importation of raw materials later to be exported in manufactured form to foreign markets, than in a country with an extensive and comparatively uniform domestic market.

⁸⁸ The savings were conspicuously large in banking where the recompense for the service of banks is dependent upon overhead costs and public charges. The combination of the Deutsche Bank and Disconto Gesellschaft alone caused the saving of no less than 110 branches.

⁸⁹ Enqueteausschuss, E-20, p. 62.

⁹⁰ The majority of experts denied a casual connection between rationalization and unemployment. The Committee, however, did not follow them, distinguishing between unemployment as a consequence of the general economic crisis, and so-called structural unemployment caused by rationalization, Enqueteausschuss, E-1, p. 113.

⁹¹ Overcapacity is to be determined not by comparing the capacity of one country with that of another, or that of the present with that in some period of the past, but by deciding whether there is harmony between supply and demand.

In the discussions where the question of "guilt" for the overexpansion of German business plays a role, it is the banks which are said to be responsible for this overcapitalization, neglecting their pre-war principle of retarding expansion when they had no possibility of placing their own issues. (See Committee report on "The Bank Credit.") But how difficult must it have been for a capital-lacking economy to resist the temptation of the credit offers of American big business. Besides, to the writer it seems to be easy to speak of guilt of economic or political groups looking at things retrospectively. Every policy is a play of actions and reactions, and the question of responsibility is in most cases rather a question of causation.

An example was the discussion of this problem in the Committee's report concerning the iron manufacturing industry (E-20 pp. 21, 121) which caused a heated discussion, since in this industry the combination of an overwhelmingly monopolistic situation with the supply of highly indispensable goods justified a strong public interest. The iron industry had to defend itself against the reproach that for the low prices on the world market it indemnified itself with high inland prices, which meant a burden upon the whole German economy estimated by the committee at 150 million marks a year; that it abused its monopolistic situation in keeping those prices unjustly high instead of eliminating or depreciating its over-investments, which the non-monopolistic industries were compelled to do and really did.

⁹² Besides the technical point of view there was especially that of capital investment during the inflation under the watchword of "Flucht in die Sachwerte" (flight from the vanishing mark to substantial values such as factories, land, houses, etc.). Enqueteausschuss, E-13, p. 12.

⁹³ Enqueteausschuss, E-1, p. 138.

⁹⁴ How the increase of the amount of fixed capital leads to cartelization has been shown in Callmann *op. cit.*, p. 24.

⁹⁵ Enqueteausschuss, E-1, p. 137.

The rapid improvement of factory equipment eliminated from the production process enterprises less progressively fitted out, which would have adapted themselves gradually had the pace of technical development been slower. How much a precipitate technical development endangers the existence of enterprises, and to what extent compulsory technical progress is risky to the capital invested, the committee has explained especially with respect to the chemical industry.⁶⁶ The rapidity of technical development, moreover, rendered the solid principles of depreciation obsolete and confronted industrialists with new difficulties. Of course, it was obvious to everyone that an increase in capital invested in new technical equipment meant also an increase in the amount of depreciation.⁶⁷ But less apparent to businessmen was the effect of technical progress on the life of factory machinery, which became obsolete sooner than before; and which, under high speed operation and the use of corrosive acids, wore out more quickly. Insufficient allowance for depreciation contributed to the bankruptcy of many an enterprise.

(b) *Bureaucratization*.—With growing size of enterprises and increasing difficulty in mastering all factory details the individual manager gave way to collective management. There is sharp difference in the position of a manager who sees the business grow and grows with it, and one who is suddenly confronted with an entity, with the parts of which he is only to a small extent familiar. No longer is the manager able to move among the workers and employees to discuss problems where they arise; modern methods of communication between employer and employee are meetings of directors with the higher employees, mostly experts, such as engineers and accountants, economists and lawyers. The direct approach of problems is lost.

(c) *Publicity*.—In prosperity, publicity is often only another kind of propaganda, bragging of success. Since 1914, Germany had not seen prosperity, and the frequent complaints of inaccurate business reports and opaque balance sheets were only too justified. This practice reached its peak when combinations in all their variations obscured their balance sheets, especially since many corporations used to show their share in the capitalization of other enterprises under a collective stock item.⁶⁸ A particular chapter is the problem of undisclosed reserves ("Stille Reserven") in connection with depreciation and the vagueness about business results with respect to daughter corporations.¹

Legal Situation.

There is no provision in the German law which restricts any form of concentration unless the transaction violates the principle of public policy (Par. 138, B. G. B.—German Civil Code). Since the German Supreme Court held concentrations contrary to public policy only in sporadic cases, this form of business organization could develop practically unopposed in Germany.² The committee devoted its atten-

⁶⁶ See p. 45, supra.

⁶⁷ There was a split as to whether the new requirements for depreciation were to be satisfied out of profits or treated as ordinary cost elements.

⁶⁸ Enqueteausschuss, E-12, p. 32.

¹ Enqueteausschuss, E-1, p. 91. These statements are especially instructive from the viewpoint of governmental supervision of monopolistic situations.

The committee discusses at length the change in the relationship between supervisory committee and board of directors. This has little interest for the American reader, whose corporation law is different in this respect.

² Enqueteausschuss, E-12, p. 71.

tion at length to the problem of voting shares. Just as under the American law, the voting shares can be used for reconstruction, reorganization, and financing purposes; for the purpose of protection against competing interests, possibly for the purpose of domination. Another protective device lies in the pooling of voting shares and in the establishment of voting trusts. Because of the use of these voting shares for reconstruction and financing purposes, their legality has not been attacked successfully. The committee emphasized that it is necessary to introduce into the corporation law a general provision against abuse of voting power.³

Cartels.

By way of introduction the committee speaks of the form and the number of cartels. The former does little to describe the character of the cartel movement; and the latter does not throw much light on the extent of cartelization; considering the difficulties of statistical inquiries because of lack of clear definition of the different forms of business combinations.⁴ Then the committee mentions the well-known economic and psychological reasons responsible for the growing popularity of cartels, such as difficulties of inflation, increasing organization of labor, and complications caused by adjusting the economic structure to the requirements of war-economy.⁵ After a short reference to the different functions of cartels in different phases of historical development,⁶ the committee turns to the "Main Problems and Practice of Cartel Policy," the legal problems, and the problems of international cartels.

In line with the general approach toward cartels in Germany, i. e., cartels are lawful and at worst a little dangerous, despite their clearly and incontestably monopolistic tendencies, the committee decided to adhere to the previous policy of restrictive control over cartel practices, and not to recommend positive intervention. It refused to distinguish between monopolistic and nonmonopolistic organizations, as such a distinction was infeasible in practice, since the monopoly concept is anything but clear. Hence the committee discusses exclusively problems of controlling the abuses of cartels, the extent to which government should be entitled to interfere with cartel problems, and what measures are to be recommended with respect to expediency and the manifold interests involved.

Problems of cartel policy.—Cartel policy, in the sense of government policy with respect to cartels, has been considered as a part of general economic policy. There was a split in views as to the extent of state influence, in particular with respect to special legislation. The target of attack was the fundamental statute, the cartel decree of 1923, which was an emergency ordinance. Some of the experts maintained that the provisions of the general laws, such as the civil, penal, and administrative law were sufficient to strangle abuses by cartels. But even those who by principle were opposed to any cartel control admitted that it was impossible to drop cartel control after it had become a fait accompli and the public had become accustomed to it. The committee reports four different reasons as justification for a state cartel policy: (1) the duty of the state to balance and coordinate

³ Enqueteausschuss, E-12, p. 23.

⁴ See r. 39, *supra*.

⁵ E-13, p. 1 ff.

⁶ See pp. 35-39, *supra*.

the many opposed interests among economic groups and individuals; (2) the necessity of adapting the present law, the outcome of an individualistic age, to modern market organizations and the ideas of an economic collectivism;⁸ (3) the duty of the state to favor by special means the rise of organizations like cartels since, compared with the former "primitive" forms of unorganized market, they represent a "higher form of economy" which deserve, with respect to their greater importance to the whole community, preferential treatment in comparison to the individual;⁹ (4) it is admitted that state interference with business may be economically favorable; that theoretically restrictive as well as positive constructive economic policy, especially with respect to the cartel-like market organizations, is justified.¹⁰

From this conclusion emerges the practical problem: How far is it possible to obtain a particular, desirable result by legislative measures? Then, from the administrative point of view, is it possible to establish a board of civil servants powerful and able enough to assume this extremely difficult task?

Cartel commission ("Kartellamt") and cartel register.—The committee dealt at length with the problem of making registration of all cartels compulsory, and of establishing a commission for supervising and investigating all cartelization, and for preparing measures of state cartel policy. For manifold reasons the majority of experts declared against such a commission and registration, and recommended that the Reich Economic Ministry should deal with government cartel policy.

The minority of the committee favored a cartel commission because they expected greater uniformity and continuity with respect to cartel policy from it than from the Economic Ministry, since the latter's personnel changed according to changes in the government's general policy. For this very reason, the majority adhered to the opposite view. According to the majority, cartel policy, like every other economic policy, should be subject to general political tendencies, and the weight of economic facts was the best guarantee for a continuity of control. It is interesting to note that the proponents of the cartel commission who, at least partly, considered the question from the viewpoint of a socialistic economic system, wished to use the new commission as a means of a positive cartel policy in order to favor the development of the organization movement. The representatives of industry, however, argued that the complexity of the modern economy and the permanent change of economic relations make such a constructive development impossible, even if the administrative authority were composed of specialized experts. Finally the latter warned that a new board, in order to justify its existence, would endeavor to expand the scope of its activity. At the outset a commission would be more than a cartel division within the Ministry of Economics. The idea of creating a cartel commission was refused.

The suggestion regarding cartel registration was based upon an endeavor to inform the public about the details of the cartel movement and to create a basis for constructive criticism of large enter-

⁸ Enqueteausschuss, E-14, p. 341 (Passow), 378 (Vogelstein).

⁹ Enqueteausschuss, E-14, p. 532 (Nipperdey). The author wishes to note that he disagrees with this view. Free competition and monopolies are complementary economic phenomena which stand neither in the relation of rules and exemptions nor of lower and higher forms of economy.

¹⁰ Enqueteausschuss, E-14, p. 329 (Lüw), 349 (Schmalenbach), 358 (Schumpeter), 368 (Vershofen), 398 (Weber), 421 (Feiler).

prises and business organizations "affected with a public interest." The same forces which defeated the suggestion of a cartel commission were successful against the cartel register. While voluntary publicity was considered desirable in order to inform the public about the behavior of monopolistic corporations or organizations, it was held that registration would become an instrument for control by government authorities. While the publicity would lead to an increasing public understanding of economic phenomena and prevent destructive criticism, the register would be a guide for state interference with the business of these monopolies. The committee, following the lead of the opponents of expanded governmental control, relied particularly upon practical objections, saying that a register, no matter how voluminous, could never give a really reliable picture; even a notation of all occurrences at meetings and elsewhere would not permit judgment about the market situation of a cartel and the effects of its activities. At best, registration could outline further detailed investigation which would have to inquire not only into the formalities of voting and decisions, but also into the much more important deviations from those resolutions in practice. Therefore, whatever the contents of such a register, there would be a disproportion between expenditure and use. Again we find the idea that the registration of a cartel says nothing about its economic importance, and that it is far from clear even to the lawyers what a cartel is. Moreover, the committee feared that compulsory registration would cause businessmen to replace formal organizations by informal gentlemen's agreements, and that it was just as impossible to get hold of those agreements as of the market activities of large enterprises, concerns, or trusts. Finally, it was said that the present law furnished sufficient basis for any information the government needed. The latter remark referred to the 1917 decree concerning compulsory testimony and par. 4, No. 4, of the cartel decree under which the Reich Economic Ministry may order that all contracts and resolutions of cartels are not in force until they are filed with the Ministry.

Supplementary institutions to the cartel authorities.—It had been suggested that a consulting board be coordinated with the cartel court; that compulsory cartels be used as a means of cartel control to a larger extent than in the past; that a means be found of settling cartel differences by way of arbitration; and that collaboration between business and government, based on confidence be furthered. While confidence cannot be commanded and must be left to the development of a spirit of understanding and trust, the committee held that compulsory cartels are undesirable, and special boards for consultation and arbitration are not necessary. Settling cartel suits by compromise has always been the endeavor of the cartel court, and a consultation board that would function usefully was hardly feasible for practical reasons. The committee emphasized that the representation of business and interested parties in the cartel court and an active contact between business and government, were much more useful than such a board.

The cartel law.—The background of the committee's legal consideration is foreign to American thinking in so far as it pertains to the problem of drawing a line of demarcation between private and public law, but not quite so foreign when it deals with the demarcation between ordinary courts and the cartel court—which is not a

court but an administrative agency—and the demarcation between this administrative agency and the Ministry of Economics. In the latter point the German approach also is different. The purely legal criticism, of the committee, discussing the anomalies of the cartel decree under German law, may be neglected here. Considerations of economic policy, however, are of interest since they are concerned with the cartel decree as a useful instrument of cartel policy. The committee concludes that the present law should not be altered, that the possibilities of state intervention are adequate and need not be amended by broader measures. The committee particularly held that it is not advisable to introduce a law forbidding particular forms or measures of cartels. It had proved, said the committee, that "Sperren" (boycotts, blocks), exclusive dealing clauses, etc., were sometimes dangerous, sometimes tenable. Finally, the committee emphasized that it was not the purpose of the cartel law to prefer or protect one-sidedly the principle of free competition or the economic freedom of the individual against market organizations.

The international cartels.—After some introductory remarks on the presuppositions of the foundation of international cartels and the statement that their difficulties are fundamentally the same as those of the national cartels, except that they assume larger proportions, the committee held that it is not necessary to create national laws in order to influence international organizations. Like the Geneva World Economic Conference in 1927, it rejected the suggestion of establishing an international control as having no prospects. Cartel committees and cartel registration were held even more impracticable than in the case of national cartels, as a special law against international cartels would have to consider the law and policy of all other countries. These difficulties seemed to the committee insurmountable.

Appraisal.—The appraisal which forms the conclusion of the committee¹¹ is in short this: The privileged market position of cartels and cartel-like organizations are not necessarily harmful to the whole economy and therefore there is no reason for restriction. Monopolistic position in itself does not require governmental interference. Theorists admit that the exercise of monopolistic power—e. g., by maintaining prices above the level of that of free competition—may have favorable economic repercussions. In general, however, it is disputed that the present expansion of cartels and trusts within the present economic organization has already shown such useful consequences that the immediate effect of monopolistic positions could be tolerated. The problem here involved is the connection between fluctuation and organization of the market. Rather generally, it is admitted that the expansion of the cartel movement does mitigate the fluctuation of market conditions, and in the long run—especially when it is in line with other methods of economic policy—it could stabilize market movements. Two points are open to question: First, whether a merely partial cartelization of economy is already mitigating or, whether on the contrary, it is apt to aggravate fluctuation; and secondly, whether an economy free of fluctuations is desirable at all.

Among the cartel purposes held favorable to the economy as a whole is included rationalization, both technical and commercial. In the latter respect, cartels pertaining to a unification of contract terms especially with respect to a unified and uniform credit policy ("Kon-

¹¹ Enqueteausschuss, E-13, pp. 23 ff.

ditionenkartelle") found increasing importance as capital resources decreased in the German economy. Both in the cartels formed by the heavy industry and those of less strongly organized industries of finished goods, technical rationalization plays an important role. What has been said about rationalization, bureaucratization, and publicity, with respect to capitalistic concentrations, is no less true with cartels.

A particularly serious chapter is that of the influence of industrial cartels upon market price. Although the committee held that this influence is, as a rule, overestimated, since most of the cartels strive merely to diminish market risks by means of setting terms of delivery or accelerating the turnover of capital, we read that the endeavor, common to all cartels, to unify the supply basis impairs the elasticity of prices, and that comparative rigidity is characteristic of the German market price. The measures which bring about this rigidity are manifold, e. g., form and scope of labor contracts, social and tax legislation, credit policy of banks, policy of cartels, cooperative marketing associations, trade unions, government competition, trade associations, resale price maintenance, inelasticity of demand, rigidity of methods of calculation, etc. However, it is impossible to go further when one is limited to general observations, since it is impossible to isolate such an investigation from the different conditions in different markets.¹² This effect depends not only upon the success of the cartelization tendencies (e. g., whether the presuppositions of cartelization are existent),¹³ but also upon the general situation in the market.¹⁴

A cartel purpose which should be favored is information service with respect to events, facts, or observations of economic details, the knowledge of which is indispensable to successful business management.

Generally, however, it is held that monopolistic market positions may lead to serious economic consequences. When this is true, governmental policy should not be confined to cartel control or control of other associations, but should be expanded to any monopolistic market situation, whether based upon associations, capitalistic concentrations, or natural development of big business. But the difficulties are obvious: while it is comparatively easy to control those monopolies which owe their existence to an association, especially when they reveal their purpose of market regulation in their by-laws, it is extremely difficult, even impossible, to control monopolistic behavior of single enterprises. This, however, the committee held to be a requirement not only of an effective economic policy, but also of justice. Hence the conclusion suggests itself that we should either abstain from any interference with cartel activities if we are unable to master the undisclosed monopolies, or discover means of a

¹² The valuable statistical material in the different reports about the different industries suggests treatment more detailed than can be given here.

¹³ Four sets of favorable circumstances are to be present: (1) The market must show some degree of elasticity of demand; (2) the product must be standardized and easily definable with respect to quality; (3) the industry most favorable to the formation of cartels is that with heavy fixed or overhead costs or large transport costs; one least capable of being rapidly adjusted to changing market conditions; (4) the members must have a certain degree of propensity for collective agreement and action. These conditions exist especially in the basic (mineral) and heavy industries. Where many small or medium-sized establishments produce specialized commodities, cartels are only selling-terms or cost-accounting associations (e. g., clothing, foodstuff, and other finishing industries). (See Hearings before the Temporary National Economic Committee, part 25, p. 13350.)

¹⁴ E. g., international competition and cartelization.

general indirect economic policy with which to restrict these undisclosed monopolies. This difficulty was presented constantly during the hearings.

Although it seems clear that the cartelization of German industry was a large factor in building up the economic structure of national socialism and totalitarianism, it seems equally clear that the dangers of monopoly control were not apparent, even to the liberal Enqueteausschuss.

The activities of this commission are interesting because the arguments for the cartel system were identical with the arguments now being used to oppose enforcement of our antitrust laws. First, there was the theory that enforcement of the antitrust laws created uncertainty in business. Then the socialist planners of Germany argued that out of their enforcement no planned economy could result. The trade associations insisted on protection against the chiseler. The unions believed that higher wages would come from large and prosperous cartels. So the Commission ended on the note of letting business combinations alone.¹⁵

¹⁵ Thurman Arnold, "Anti-Trust Law Enforcement, Past and Future," *Law and Contemporary Problems*, Duke University Press, Durham, Winter, 1940, pp. 5, 7.

CHAPTER II

REGULATORY EXPERIENCE IN GERMANY UNDER NATIONAL SOCIALISM

CARTEL LEGISLATION SINCE 1933

The foregoing study has shown that cartels extended over a wide sector of Germany's economic system prior to the World War, and particularly during the post-war period, covering the most important branches of industry, trade, and banking. The Cartel Ordinance of 1923, while it subjected cartels to government supervision, and regulated withdrawal from cartels as well as the application of group pressure, still adhered to the old view of making cartels binding upon the contracting parties, but not upon outsiders. This principle was changed basically under the National Socialist rule.

Following Hitler's rise to power the cartelization movement in Germany entered a new stage of development. The primary objectives of cartelization were very considerably modified under the Nazis. Whereas in the pre-Hitler era the purpose of cartels was to fix sales conditions, prices, or territorial quotas, under the totalitarian rule they became effective instruments of planning in the hands of the government. The regulation of prices, quantities, and kinds of raw materials to be produced, etc., have become functions of the government, and control of industrial operations remained only nominally in private hands. Hence, the measures introduced for the regulation of production, prices, foreign trade, etc., are being framed in the interest of national policies, such as the fullest realization of the country's natural policies and not for the benefit of the cartels.

A definite step in this direction was the enactment of the decree issued on July 15, 1933, which, besides strengthening the power of the Ministry of Economics, authorized the Minister of Economy to enforce compulsory syndicates, conventions, and similar arrangements upon any groups of concerns for the purpose of market regulation, to compel outsiders to join them, and to prohibit the establishment of new enterprises.

The reasons for, and the purposes of, the compulsory cartel decree were stated in a press release, issued by the German Government:

The grave crisis which is now bearing down upon German economy has struck most severely those branches of industry whose productive capacity greatly exceeds the present marketing possibilities. In several branches the intense competition and the depressed price level resulting therefrom have reached the point where the ruin of enterprises which are of value to our national economy is threatened. Those of our people who are employed in these industries would be the first to suffer. Therefore greater power must be given to the state to intervene in the public interest for the purpose of creating order. This Statute does not purport, however, to bring about a fundamental change in our existing economic system, which latter is based on the initiative and responsibility of the individual enterpriser, nor does it purport to pave the way to a state-planned economy. The powers granted by this act shall be invoked only with great

caution and only provided that private enterprise cannot find its way out of the present difficulties on its own initiative. The provisions contained in the act correspond in many instances to wishes expressed by business itself. These provisions are transitory in character, and are to be abolished as soon as economic conditions improve, and sufficient trade is available for existing enterprises.
* * *

Whenever a compulsory combination is formed, care must, of course, be taken that the price policy, of, and the other terms and conditions imposed by, such combination do not unduly favor the interest of the parties thereto, but that they give proper consideration to those sections of the population affected by the regulation of the market, particularly to ultimate consumers and other purchasers * * *. [Article V] has been inserted into the act primarily because of the economic necessity to prevent unwise investment of capital, which is badly needed at this juncture for purposes of stimulating recovery and creating employment, and to stop its influx where already existing plants are manifestly sufficient to meet the demand.¹

Compulsory cartels are not new in German law. The significance of the act of July 15, 1933, lies in the fact that the Reich Minister of Economics has thereby been empowered to establish compulsory cartels in any branch of industry by executive decree. The position of the Reich Minister of Economics has been greatly strengthened. The cartel contract between producers is subject to his approval. He has authority to compel the cartel's adoption of measures considered to be of urgent and vital importance to the public welfare. While prices are as a rule to be fixed by the cartel itself, the government may at any time change those prices by decree. The voting power of the individual cartel members must correspond to their respective production quotas, but in order to counteract or guard against abuse of power by a majority, the Reich Minister of Economics may issue regulations providing for a different distribution of voting power.²

The Cartel Decree of 1933 was the first of a long series of regulations establishing compulsory cartels. (In this connection, it has been pointed out that "a compulsory cartel is not a cartel. It is an effective means of economic planning in the hands of dictatorial governments.")³ From March 1933 until June 1934 the Minister of Economic Affairs applied the compulsory cartelization law to a number of industries.⁴ The law prohibits these industries from (a) setting up new undertakings; (b) adapting plants engaged in other lines of production in order to produce goods on the list in footnote 4; and (c) extending the capacity of existing undertakings or reconditioning of shut-down plants.⁵ Concerns which were prohibited from expanding in their principal line were also forbidden to expand in allied lines. Most of the industries to which these restrictions applied were producers of capital goods.

The restrictions imposed on the capital goods industries at the beginning of the Nazi regime were dictated by the realization that in a capitalistic economy producers' goods are hit hardest when depression sets in, and, conversely, recover most rapidly with an upswing of the business cycle. Thus, the government was anxious to be in a position to dictate the extent to which these industries should expand

¹ H. W. Jervey and Francis Deák, *The Case of Monopoly versus Competition*, Volume 1, Columbia University School of Law, 1934, pp. 106, 107.

² *Ibid.*, p. 109.

³ Hearings before the Temporary National Economic Committee, Part 11, p. 327.

⁴ Jute; low-powered electric lamps; stockings and glove finishing and stocking dyeing; nitrogen; high tension and insulated cables; zinc products; metallic and red arsenic; salt production; cigarettes; paper, cardboard, and pasteboard; radio sets; earthenware and pottery goods; peat dust and moss litter production; hyperphosphates; stone production. See Reichskreditgesellschaft, *Germany's Economic Development During the First Half of the Year 1934*, Berlin, p. 4.

⁵ *Idem.*

or contract, or the degree to which they would be allowed to use certain raw materials at the time when the government-generated boom was to set in.

An amendment to the act passed on November 2, 1933,⁶ empowered the government to dissolve all cartel agreements without resort to the Cartel Court and without judicial review.⁷ In 1933, the rayon, brass pipe, and cast chain cartels were compelled to dissolve; the brick cartel, in 1934; and the electrical wholesale trade, spinning materials, wrist watches, and the central heating and ventilation cartels in 1936.⁸

By 1933-34, a large part of the finished goods industries and wholesale trade had been cartelized, and cartelization had assumed a great variety of forms. The following are the most important: Agreements between producers and sellers; combining regional associations into national associations; extension of the associations by introduction of price conventions, uniform delivery conditions, or setting of quotas; extension of the cartels by voluntary or compulsory membership for outsiders; forced cartelization of economic branches not yet cartelized; prohibitions against new investments, etc.⁹

By an ordinance of May 16, 1934, cartels were no longer allowed to fix or recommend minimum prices for articles of prime necessity without consent of the government. An ordinance of August 1934 extended this provision to all articles.¹⁰ In some instances, where cartelization was not forced upon an industry, outsiders were obliged to follow the prices set by the cartel, but were exempted from the quota restrictions.¹¹

The fight against unemployment during the first years of the Nazi regime opened up additional avenues for the cartel policy. To create employment, limitations were placed on the introduction of labor saving machinery in certain industries. Works which had been closed down were reopened.

In a word, the influences working toward the selective survival of the best-equipped plants were superseded by the tendency to adapt regulation of prices and production to the needs of all those competing in the field of the cartelized trade, no regard being taken for economic efficiency.¹²

In some industries, the shortage of raw materials was responsible for the restrictive measures. Thus in July 1934 the Textile Fibres Decree was passed, regulating in detail the price of textile materials and fabrics, restricting working hours (except for export) to 36 per week and prohibiting any expansion of textile plants. In December 1935 the former decree was replaced by the Textile Materials Law, the purpose of which was to regulate the volume of manufacture by giving each firm a manufacturing quota. Due to the scarcity of wool and cotton, it has been decreed that all wool and cotton cloth manufactured in Germany for the domestic market must contain a certain percentage of staple fibre. Also, certain products may no longer be made of

⁶ Not to be confused with the decree concerning the Establishment of Compulsory Cartels issued on the same date.

⁷ Heinrich Friedlaender, "The Legal Position of Cartels and Concerns in Europe," quoted in Hearings before the TNEC, Part 11, p. 22.

⁸ Vaso Trivanovitch, Germany under National Socialism, National Industrial Conference Board, New York, 1937, p. 29.

⁹ Weekly reports of the German Institute for Business Research, Berlin, December 16, 1936, p. 104.

¹⁰ Hearings before the Temporary National Economic Committee, Part 11, p. 327.

¹¹ Karl Pribram, Cartel Problems, Brookings Institution, Washington, 1935, p. 266.

¹² "Kartellkonjunktur-Konjunkturkartelle," Frankfurter Zeitung, Dec. 17, 1933, quoted by Pribram, *op. cit.*, p. 265.

brass. In private residential building only a certain amount of construction iron may be used. All factories which use imported raw materials are allowed to purchase only a certain volume of raw materials abroad. The necessity of conserving foreign exchange was another source of restrictive legislation.

The decree of March 1935 prohibited the so-called "agreement-cartels," forbidding all consultations in regard to prices, cost calculations, and preliminary bids. This decree holds such proceedings subject to fine unless they are reported to the authorities before the bid is submitted.¹³

By the decree of November 12, 1936, the cartels were placed under the supervision of industrial and trade organizations.¹⁴ This may mean that cartel policy in the future will be subordinated to considerations of foreign trade, with regard to wages, prices, etc., rather than to the interest of its members.

Under a decree of September 5, 1939, the Minister of Economics could compel industrial enterprises to combine for the purpose of rationalizing production, pooling patents, erecting new plants, promoting exports, etc.¹⁵ By January 1940, about twenty new cartels had been formed for such purposes.¹⁶

With the improvement of business conditions in the years 1935 and 1936 there was a decline in the number of new cartels formed. According to the German Institute for Business Research, in connection with increased production certain efforts toward cartel reform began to make themselves felt: "These efforts seek to achieve renunciation by cartel members of differential profits in return for the benefits of increased business. The cartel form which best satisfies these requirements is the Kalkulationskartell. The important newly-formed cartels of this type include the compulsory cartel for the graphic industry, a compulsory cartel in the foundry industry, and a voluntary cartel in the central heating and ventilation industry. From a legal standpoint it could be argued whether such organizations were really cartels at all. In all three of the above, the common point is that differential profits can be renounced. Certain prices are set by the graphic and foundry cartels, but these are not minimum prices, since they can, and are to be, underbid, if, as in the foundry cartel, an examination shows that cost calculations have been determined as agreed upon, or if, as in the graphic industry, the establishment can prove that it has fulfilled all its obligations, i. e., taxes, social fees, etc. Price restrictions in the central heating and ventilation cartel are even less binding. In this case, there is no restriction of prices. There is only a set and agreed way of calculating costs. It may be possible that in the long run such a cartel will assume the form of a price cartel. However, even then the prices set would be only average prices and not marginal cost prices as in the usual cartels."¹⁷

As to the extent of cartelization, it was estimated by the German Institute for Business Research even at the end of 1936 that all domestically produced industrial raw materials and semi-finished goods, and at least half of the industrial finished goods production were cartelized.¹⁸

¹³ Weekly Reports of the German Institute for Business Research, June 2, 1937, p. 4.

¹⁴ *Ibid.*, December 16, 1936, p. 103.

¹⁵ Reichsgesetzblatt, I, 1939, No. 164.

¹⁶ Deutsche Bergwerks-Zeitung, January 6, 1940.

¹⁷ Weekly Reports of the German Institute for Business Research, December 1936, p. 104.

¹⁸ *Ibid.*

THE STRUCTURE OF GERMAN ECONOMY UNDER NATIONAL SOCIALISM

The extent to which State regulation along all lines of economic activity has become the dominant element of the German economic system may be realized by examining the structure of the principal organizations that make up the National Corporations of the Third Reich:

The Agricultural Estate (Reichsnaehrstand).

The Estate of Industry and Trade (Organization der gewerblichen Wirtschaft).

The Estate of Handicrafts (Reichsstand des deutschen Handwerks).

The Transport Organization (Aufbau des Verkehrs).

The Labor Front (Deutsche Arbeitsfront).

Of these organizations, the Agricultural Estate has reached the fullest degree of development.

Through the cartels, which cover all raw materials produced in Germany, half-finished goods, the major part of the production of finished goods, and the organization of industry and trade, the Nazi government is in the position to exercise complete control over business.

REGULATIONS OF THE AGRICULTURAL ESTATE (REICHSNAEHRSTAND)

The Agricultural Estate was the first corporative organization to be instituted by the National Socialist Government. (See Chart I.) It has its legal origin in the law of September 13, 1933, issued by the Reich Minister of Food and Agriculture, "providing for the preliminary organization of the Reich Food Estate and for measures to regulate the markets and prices for agricultural commodities."¹⁹

The Agricultural Estate is a compulsory cartel under public control. On the production side, it includes landowners, tenants, farmers, and agricultural workers, engaged in farming, forestry, horticulture, fisheries, and game resources. On the distribution side, it covers producers, processors, the entire retail and wholesale trade in agricultural commodities, as well as agricultural cooperative societies and the new associations created for marketing. Manufacturers, such as millers, brewers, confectioners, butchers, etc., belong not only to the Agricultural Estate, but also the Estate of Handicrafts or Industry and Trade. The task of the Agricultural Estate is to control production, prices, marketing and other matters pertaining to agriculture. It seeks to do away with price competition in the market. Competition is curtailed in the field of wholesale trade as well. Futures trading has been abolished as unethical speculation. The merchant is to be transformed into a distributor who does his duty according to quotas and who may not compete with his fellow-merchants for a share of their business.²⁰

¹⁹ Gesetze und Verordnungen der Milchwirtschaft, pp. 75, 76, quoted by Karl Brandt, *The German Fat Plan and its Economic Setting*, Food Research Institute, Stanford University, Calif., 1938, p. 194.

²⁰ Karl Brandt, *op. cit.*, p. 195.

The law creating the Agricultural Estate—

permits the Secretary of Agriculture to scrap any existent corporation or other association of men or enterprises, and to set up an entirely new structure of the whole market from top to bottom, according to his own design * * *. The law also empowers the Secretary of Agriculture to exert any control or to interfere with the business of individuals, cooperative associations, or other corporations whenever he considers it necessary * * *.²¹

In addition to the organizations in charge of market regulations, there were established government monopoly boards (Reichsstellen) for the main foodstuffs, grain, and fodder; animals and animal products; oils, fats, and dairy products; eggs; garden products; and certain other foodstuffs. By controlling the prices at which foreign foodstuffs can be sold and also the rate of accumulation of stores within the country, these Boards play an important part in determining the domestic price level. The Boards do not, except in certain cases, import the required foreign supplies, but without their permission imported food cannot be sold in Germany. In case the price of foreign food, including the import duty, is less than the domestic price, the importer must pay the Board the difference between his import price, plus the duty, and the domestic price, and in addition pay a fee charged by the Board.²²

In addition to controlling the supply of foreign foodstuffs, the Food Boards also control the purchase, sale, and price of domestic produce within the country. It is their duty to see that shortages of food do not occur, to encourage the use of home grown products, and to discourage the use of imported products.

Membership in the Reich Food Estate is in part through the cooperative marketing associations. The Market Section of the Agriculture Estate consists of 10 Central Marketing Unions (Marktverbände). These Central Marketing Unions are organized on a regional basis according to commodity groups, with a central organization for each group of regional (commodity) associations. Also, the marketing of each product is organized on horizontal and vertical lines. The vertical organizations (Hauptvereinigungen) of the Central Marketing Unions were created to control their respective commodities from the farmer to the consumer, while the horizontal federations (wirtschaftliche Vereinigungen) covered those engaged on each stage of the productive process. The horizontal federations are compulsory cartels with power to control prices; regulate standards of quality; prohibit, except under license, the establishment of new enterprises or enlarging of existing ones; and establish production quotas. Other regulations have been put into effect in order to assist domestic agriculture by encouraging the use of home grown products and discouraging the use of imports.

The main feature of price control is the establishment of basic prices to producers for the different grades of a given agricultural product, by regions. Deviations from the standard price often occur according to variations in locality, season, freight differentials, etc. Where adequate standards of quality are lacking, regulation has taken the form of minimum prices. Violations of the price control system are punishable by fines up to 100,000 reichsmarks (equivalent to \$40,000) and/or imprisonment.²³

²¹ *Ibid.*, p. 196.

²² C. W. Guillebaud, *The Economic Recovery of Germany*, MacMillan, New York 1938, p. 156.

²³ Foreign Agriculture, "Wartime Agricultural and Food Control in Germany," April 1940, p. 186, Office of Foreign Agriculture Relations.

The agricultural set-up of the Food Estate was further enlarged through the decree issued on August 27, 1939, establishing formal rationing. Under this decree state, provincial, district, and local Food Control Offices (Ernaehrungsämter) were organized under the jurisdiction of the Reich Minister of Food and Agriculture. The functions of these offices are the supervision and control over the acquisition and distribution of foodstuffs and the assurance that agricultural production in their respective territories is maintained at capacity.²⁴

Under the August 27 decree different parts of the Reich Food Estate in the states and provinces are subjected to the control of the respective state or (in Prussia) provincial Food Control Offices. Furthermore, the Reich Food Estate in its entirety is placed under the jurisdiction of the Reich Minister of Food and Agriculture.

The formation of a General Council of War Economy was announced on January 4, 1940, to coordinate and control every branch of the German national economy.

CORPORATE ORGANIZATION OF INDUSTRY AND TRADE

The Enabling Act of February 27, 1934, empowered the Minister of Economic Affairs to organize the Estate of Industry and Trade. He was authorized--

1. To recognize associations as the sole representative of their branch of trade and industry;
2. To establish, dissolve, or amalgamate associations;
3. To change and supplement the statutes and agreements of associations and in particular to introduce the principle of leadership;
4. To appoint and dismiss leaders of associations;
5. To compel employers and undertakings to join associations.²⁵

The two outstanding principles of the Estate of Industry and Trade are (a) compulsory membership and (b) the leadership principle. Failure to register is an offense punishable by fine.

The Estate is divided into six national groups of business (Reichsgruppen): (1) industry; (2) handicrafts; (3) trade; (4) banking; (5) insurance; (6) public utilities. Transportation was added later as the seventh group. The most extensive group, industry, has seven subdivisions (Hauptgruppen), which are further subdivided into trade groups (Wirtschaftsgruppen).

The Reichsgruppen are organized regionally by district groups (Bezirksgruppen) in each of fourteen districts into which the country is divided. There is an Industrial Board (Wirtschaftskammer) in each district, with the exception of Westphalia and Southwestern Germany, in each of which there are two Industrial Boards.²⁶ These industrial boards represent all economic interests within the district, but they have no legal status. The legal representatives of industry and trade in each district are the Chambers of Commerce, in which membership is compulsory. The supreme body of the Estate of Industry and Trade is the Reich Economic Chamber (Reichswirtschaftskammer), the whole structure being subordinated to the Minister of Economics.

²⁴ Ibid., p. 285.

²⁵ E. C. Donaldson Rawlins, *Economic Conditions in Germany to March 1936*, Department of Overseas Trade, London, 1936, pp. 86, 87.

²⁶ Vaso Trivanovitch, *Economic Development of Germany under National Socialism*, National Industrial Conference Board, New York, 1937, p. 25.

In contrast to the Agricultural Estate, the Estates of Industry and Trade were not allowed to establish special market and price policies. These problems were put under the special province of the cartels. But such questions as general economic policy, trade policy, money, bank, and credit policy, foreign exchange control, laws, and taxes belong to the Reichsgruppen.²⁷

Following the outbreak of the war, a Ministerial Council for Reich Defense was established to coordinate economic and administrative activity. The Estate of Industry was ordered to cooperate with this office as well as with the central authorities, thus being reduced to the position of an administrative agency of the government.²⁸ The Minister of Economics appointed special Reich Commissioners to the Chamber of Commerce and Industry.²⁹

CONTROL OF RETAIL TRADE

The determination to maintain small establishments was declared to be an important objective of Nazi policy, and was responsible for directing the cartelization movement into new channels. Cartel policy became greatly concerned about middle class protection during the first few years of the Nazi regime. Smaller concerns received special concessions which were not granted to the larger ones.³⁰

There are several racially discriminatory decrees concerned with commerce, including one forbidding Jews to work as commercial travelers.

By a law passed May 12, 1933, a permit from the Minister of Economics was required to open a retail store. This was originally intended as a temporary provision to control the situation created by excess capacity in that field, but on December 22, 1934, it was made permanent and it became clear that a general licensing system for retailers was intended. The new regulation required the applicant for a retailer's license to satisfy the government as to his character, reliability, and professional knowledge. It was also provided that an existing store could not be expanded by more than 25 square meters without a license. A license is required to purchase an existing store.

Mail order houses apparently were not affected, but in July 1934 the Minister of Economics prohibited the opening of mail order houses for textiles, or the expansion of existing ones. A decree of May 24, 1937, requires the approval of the Minister of Economics before any mail order house may be opened or expanded. New commodities may not be added to the list without approval, nor packing or mail rooms enlarged. The decree applies to factories and department or other retail stores doing a mail-order business.

CONTROL OF IMPORTS AND FOREIGN EXCHANGE

The control of imports functions under the jurisdiction of the Ministry of Economics. For this purpose 27 supervisory offices have been established, each in charge of a certain commodity or commodity group, and regional foreign exchange offices have been set up. Both

²⁷ Supplement to the Weekly Report of the German Institute for Business Research, March 11, 1936, p. 1.

²⁸ Voelkischer Beobachter, September 8, 1939, "Die Wirtschaftsverwaltung."

²⁹ Ibid., September 22, 1939, "Zusammenarbeit zwischen Staat und Wirtschaft."

³⁰ Owing to the labor shortage in the ensuing years, this policy was abandoned, and the government urged retailers to abandon their trades and to become industrial workers, pointing to the excess capacity of retail trade.

are under the authority of the Minister of Economics, except that the five Reich Monopoly Offices mentioned above are under the Ministry of Food and Agriculture.³¹

Under the German foreign exchange control which was in effect from September 1931 to July 1934, each importer was given a foreign exchange allotment in proportion to his pre-1931 business. The quota granted to importers had been progressively reduced from 50 percent to 5 percent, until finally the whole system broke down in June 1934. Under Schacht's "New Plan," inaugurated in September 1934, instead of foreign exchange allotments, foreign exchange certificates had to be issued for each individual import transaction. At the same time, a comprehensive import control system was established and administered by the Government.

Control of foreign exchange transactions is carried out by 27 central boards. They are charged with issuing exchange certificates and deciding where and for what goods the available supply of foreign exchange should be used.

The Control Office for rubber restricts the quantity of natural rubber per bicycle tire. The Control Office for copper prohibits the use of copper for power transmission lines. The Control Office for non-ferrous metals prohibits their use for many industrial purposes. The Control Office for carbon black forbids the establishment of new plants or the expansion of old ones.

The Central Foreign Exchange Office of the Ministry of Economics, local exchange offices, and control boards are responsible for the management of barter transactions and commercial exchanges under the clearing agreements.

SUBSIDY SCHEMES FOR EXPORTS

With high domestic prices, rising costs of production, and the nominal retention of the gold standard, the Reich could not compete in price with other nations, hence Germany had to give special assistance to her exporters to enable them to compete on the world market. This assistance has taken various ingenious forms. During the first years of the Nazi regime, foreign exchange regulations prohibited the repayment to foreigners of capital sums and later interest as well.³² These measures depressed the prices of foreign-owned German securities, while they retained their full domestic value; accordingly, prices quoted in Germany were much higher than abroad. German firms which wished to compete on the world market with foreign firms could, with the permission of the foreign exchange authorities, purchase German bonds or stocks with foreign exchange at the depreciated foreign rate, repatriate them, and sell them at a profit on the home market, using the profit to compensate themselves for losses on export transactions. Similar use was made of the bank accounts of foreigners blocked by the moratorium of 1931, and of other untransferable amounts paid into blocked accounts. These accounts could be bought up by German concerns at a heavy discount. The profit so made had to be devoted to the subsidy of exports.

As such sources gradually dried up, new devices had to be found to assist exports. Through subordinate sections of the Estates of In-

³¹ Space does not permit an adequate discussion of German foreign trade policy here.

³² E. C. Donaldson Rawlins, *op. cit.*, p. 166.

dustry and Trade, a levy was made on all industrial enterprises in order to form a subsidy pool for exports, centralized in the Gold Discount Bank. Particulars of the scheme have not been published. Contributions to the fund may not be inserted in balance sheets, and no information regarding the amount by which a given export transaction is assisted may be communicated to the foreign customer.³³ The scheme is officially stated in Germany to be one of self-help on the part of German industry itself, under the corporate organization of industry and trade, and not the Government itself. Shortly after the promulgation of the scheme the following law was published (Reichsgesetzblatt, June 29, 1935):

The Reich Chamber of Economy can promulgate orders for the levy and expenditure of proportioned imports by groups or associations (of entrepreneurs and enterprises of industry) in their capacity as organs of self-administration, and for the collection and exaction of such imports by Chambers of Industry and Commerce, Chambers of Handicrafts, and other public associations, recognized by law, of entrepreneurs and enterprises of industry.

CONTROL OF INDUSTRIAL PRICES

One of the most fundamental principles of National Socialist economic policy has been the maintenance of stable price relations. While at the beginning of the Nazi regime the aim of the price policy was to stop the downward movement of prices, after 1934 the major concern became to prevent domestic prices from rising.

An emergency decree issued in December 1931 provided for the control of prices and for the appointment of a commissioner for the supervision of prices. These regulations were temporarily maintained and supplemented by the Hitler Government, though the duties of the Price Commissioner were transferred to the Minister of Economics and Food. In 1933 fixing of minimum prices and profits on the sale of foodstuffs was prohibited without the approval of the price control authorities.

The decrees issued in November and December, 1934, further extended the functions of the Price Commissioner, empowering him to fix all prices and profit margins.³⁴

The Price Commissioner was reappointed by law on November 5, 1934, and functioned until July 1, 1935, when his duties were transferred to the Ministry for Economic Affairs and the Ministry of Agriculture. By a series of decrees passed in 1934, all cartel price agreements entered into after June 1933 had to be reported to the Price Commissioner, and all plans regarding new and higher prices had to be submitted to him.³⁵

By the "Decree with respect to competition" of December 21, 1934, unfair competition by price cutting, at the expense of the State, employees, creditors, or tax payments, was subject to heavy penalties.

In various branches of production, i. e., textiles, where reduced imports of raw materials led to scarcity and higher prices, special legislation was passed fixing maximum prices. In other instances, the Price Commissioner laid down what were considered normal prices (Richtpreise); a firm charging more than the normal price had to submit his accounts for investigation.

³³ Ibid., p. 157.

³⁴ World Economic Review, Bureau of Foreign and Domestic Commerce, 1934, p. 133.

³⁵ Guillebaud, op. cit., p. 167.

In the course of 1936 it appeared that the existing machinery for price control was inadequate to check the rise of the domestic price level in the face of rising world prices and the demands of the second 4-year plan for raw materials. Thus, toward the end of 1936, it was announced that the Price Commissioner would be replaced by a Commissioner for Price Formation. He was to establish centralized price control with wider powers than his predecessors had. On November 26, 1936, he issued the famous price stop decree which prohibited price increases, except with his consent, above the level prevailing on October 17, 1936. The decree applied to all prices except wages. Heavy penalties were imposed for evasion, such as altering the quality of goods, etc.

A decree passed in July 1937 set aside the price stop decree as regarded imported goods, and provided for a more flexible adjustment of prices to market conditions. In the case of imports bought and sold in organized exchanges, it has introduced the possibility of fixing prices in terms of repurchase costs. Fixed margins were substituted for the practice of calculating them on a percentage basis on costs and profits.³⁶

On November 21, 1938, regulations were issued regarding the determination of prices in public contracts. These regulations affected a whole range of construction and other works—particularly in the field of armaments—of which the State is the chief or only purchaser.

At the outbreak of the war a number of new decrees were issued.³⁷ Under the War Emergency Act (*Kriegswirtschaftsverordnung*) of September 3, 1939, manufacturers were compelled to reexamine their price calculations, and, if necessary, adjust them to war conditions. Excessive profits, as well as the inclusion of war risks in prices, were prohibited. Stop prices and monopoly prices are to be reexamined in order to find out whether they can be lowered.

Price decreases may be considered for goods required by the Government, in order to secure a reduction in the cost of war.

To prevent a shifting of increased overhead expenses to the consumer, the decree provides maximum profit rates for the retail trade.

To make the new price regulations effective, the control of wages was intensified. According to the wage-stop decree, wages cannot be lowered or increased without the consent of special authorities.

CONTROL OF THE CAPITAL MARKET

The principle laid down by the Nazi government with regard to the capital market was that public demands have precedence over private demands. In order to assure such precedence, measures were taken which resulted in the practical exclusion of private concerns from the capital market.

Limitations upon the extension of production in certain industries were combined with prohibitions against new capital investments. The declared purpose of such prohibitions was to prevent such industries as paper, glass, and parts of the textile industry, and chemical industries from using up the limited capital by extending their plants.

Second place was given to companies engaged in the production of goods in which the Government has some special interest, and whose

³⁶ Reichskreditgesellschaft. Germany's Economic Situation at the turn of 1937-38, p. 48.

³⁷ Weekly Report of the German Institute for Business Research, March 13, 1940, p. 23.

profits and sales have been guaranteed by the Government. Industries producing staple fibers, motor fuel, and synthetic rubber fall into this classification.

In some fields the State itself has gone into production and invested capital as in the case of the Hermann Goering Reichswerke A. G., which is engaged in mining the low grade ores which abound in Germany.

The chief purpose of the Loan Stock Law (*Anleihestockgesetz*) of December 1937 was to make the stock market unattractive to investors and thus divert funds to the government bond market. This law limited the payment of cash dividends to 6 percent, or under certain conditions, 8 percent. Excess dividends had to be turned over to the Gold Discount Bank for investment in government bonds for a term of 4 years. The Gold Discount Bank was to administer these investments as a trustee for the stockholders. A decree passed in December 1934, in addition to extending the original measure for 3 years, provided for the distribution of impounded dividends in the form of non-interest-bearing tax certificates accepted in payment of all taxes, with the exception of the wage income tax and the capital profits tax during the fiscal years 1941-45.³⁸

LIMITATION ON THE ISSUE OF SECURITIES

The issue of industrial bonds and stocks has been permitted in recent years almost exclusively for conversion purposes or for financing the 4-year plan. Furthermore, the issue of additional stock was made subject to the approval of the Minister of Economics by the law of administration and extension of the dividend limitation law (*Anleihestockgesetz* of February 27, 1935).³⁹

In addition to the embargoes on new security issues, various other methods were evolved by the Nazi government to direct the stream of credit, i. e., the floating of Government funding loans in rapid succession, the absorption of liquid short-term capital by the issue of one-name bills, the enrollment of the whole banking system and of the insurance companies for the financing of public works, etc.⁴⁰

Recently the Reich Government lifted its absolute monopoly on the capital market for Government issues, and permitted several industrial concerns to attract new capital for the financing of plant expansion for armament works. This, however, does not mean that the Government intends to relax its control of the capital market; on the contrary, its control remains absolute and enables it to regulate investment activity.⁴¹

CONTROL OF STOCK EXCHANGES

First of all, the supervision formerly exercised by the various states was transferred to the Minister of Economy.

By a law passed in December 1934 the number of stock exchanges was reduced from 21 to 9, by closing some of the provincial exchanges and merging others.

³⁸ Economic Review of Foreign Countries, Bureau of Foreign and Domestic Commerce, 1937, p. 26.

³⁹ Supplement to the Weekly Report of the German Institute of Business Research, April 21, 1937, p. 3.

⁴⁰ *Reichskreditgesellschaft*, Germany's Economic Development during the First Half of the Year 1937, pp. 4-5.

⁴¹ *The Annalist*, October 3, 1940, p. 429.

The decline in security trading on most provincial exchanges and the concentration of trading on the Berlin Bourse had made many of the smaller exchanges uneconomic. To improve the situation of the remaining provincial exchanges, it was provided that no security may be listed on the Berlin Bourse if the total issue is less than 1,500,000 Rm. A minimum of 500,000 Rm. was set for the Frankfurt and Hamburg exchanges, and 250,000 Rm. for the others.

During 1936 there was a great deal of speculative activity in such foreign securities as were admitted to the German exchanges. In order to prevent this the free sale of certain foreign securities was completely prohibited.⁴²

BANK CONTROL

The Reichsbank Law of June 1939 confirmed the development of the past few years under which the Reichsbank was converted from an independent bank of issue to an instrument for carrying out Nazi economic and financial policy.

The new law subordinates the Reichsbank to the Reich Chancellor, and provides that the Chancellor alone has authority to determine the amount of credit which the Reichsbank might extend to the Government. All existing formal restrictions and guaranties limiting Government borrowing from the bank were removed.

REGIMENTATION OF LABOR

Immediately following the dissolution of all German trade unions on May 2d, 1933, the German Labor Front was established. The membership of the Labor Front now consists of all brain and manual workers, whether employees or employers. Its main task is to insure industrial peace, to establish solidarity among its members, and to abolish class distinctions.

The central office of the Labor Front has 14 sections. The vocational organization consists of the 18 Reich trades divisions. The territorial organization coincides with that of the National Socialist Party. There are 33 Labor Front regions (Gauc), one of which is the foreign region. These are subdivided into 821 districts (Kreise) and 14,744 local groups (Ortswaltungen).⁴³

The law for the regulation of national labor was passed on January 20, 1934, and was designed along the principle of leadership. One section of the law provides for the formation of mutual trust councils (Vertrauensrat) in all firms with more than 20 employees. The owner of the establishment, called the leader, is president of the council. The duty of these councils is to act as intermediary between the employer and the employees.

Section II deals with the labor trustees (Treuhaender der Arbeit) who are appointed by the Government. Since strikes and lock-outs are prohibited in Germany, the labor trustees were charged with maintaining industrial peace. They have the power to fix minimum wages and increase hours of work as much as 10 hours.

In every firm employing as many as 20 salaried and wage-earning employees, work regulations must be issued in writing by the employer. The rules issued by the leader are legally binding on the followers.

⁴² Supplement to the Weekly Report of the German Institute for Business Research, April 21, 1937, p. 4.

⁴³ E. C. Donaldson Rawlins, op. cit., p. 211.

The work regulations must be submitted for discussion by the mutual trust council.

A court of social honor is established in each labor-trustee district. Its purpose is to prevent abuses of authority on the part of business management and to stop interference with business conduct on the part of employees.

Protection against dismissal: If a person employed under contract is given notice of dismissal after working in the same firm for 1 year (provided the firm employs at least 10 persons) he can apply to the labor court (*Arbeitsgericht*) for cancellation of the notice, if the latter is unduly harsh and is not caused by the position of the firm.

Employment Book (*Arbeitsbuch*): The Minister of Labor in a law of February 26, 1935, decreed that no clerical employee or manual worker may be hired who is not in possession of an employment book, which is intended to be a record of the working career of the owner. It is supposed to help the Reich Labor Exchange and Unemployment Insurance Office in proper placement of workers, in reducing the number of candidates for overcrowded trades, in stopping the flight from the land, and in preventing workers from having two sources of earnings, or from earning money when they are on the dole.

Other labor legislation issued under the National Socialist regime includes:

The decree of September 1, 1935, prohibiting, except under sanction of the Minister of Economic Affairs, the emigration of skilled workmen and technicians;

The Law for the Regulation of the Supply of Labor (May 15, 1934) empowering the President of the Reich Labor Exchange and Unemployment Insurance Office to designate districts with high unemployment as "closed zones" against migratory labor (Berlin, Hamburg, and Bremen have been declared "closed zones") and to forbid the engagement of agricultural workers in other branches of industry;

Decree concerning the Allotment of Labor (August 10, 1934) which provided that the Reich Labor Exchange and Unemployment Insurance Office is the only body entitled to regulate distribution of labor over the available employment;

The Order of August 28, 1934, stipulating that all firms and public works (agriculture, forestry, and domestic service are excepted) must, if called upon by the Labor Office, exchange workers of either sex under 25 years of age for older unemployed, preference being given to married men with large families;

A law of December 1, 1935, conferring upon the Reich Labor Exchange and Unemployment Insurance Office the sole right to carry on employment agency work in Germany.

To secure the labor forces necessary for the second Four Year Plan and to direct all employable persons to the work for which they are best fitted, five decrees were issued by President Goering on November 9, 1936:⁴⁴

(a) Industrial entrepreneurs who, for longer than two weeks, employ skilled metal and building workers on tasks which are predominantly other than those for which they have been trained, shall at once report particulars to the appropriate labor office. The labor offices are then to arrange the transfer of such workers to positions which are more suited to their special qualifications.

⁴⁴ Reichskreditgesellschaft, Germany's Economic Situation at the Turn of 1936-37, pp. 33, 34.

(b) To prevent undesirable competition for the services of skilled workers among employers, anonymous "box" advertisement of jobs for skilled workers in the metal and building trades was prohibited.

(c) In order to secure an adequate supply of skilled workers in the heavy and metal industries for communal and Government work, it was ordained that all engagements of additional metal workers in private or public enterprises, wherever the increase amounts to more than 10 such workers in any one quarter, must be authorized by the appropriate labor office.

(d) A further decree encourages the increased employment of salary earners of the higher age groups.

(e) The last decree relates to the training of the younger generation. To provide for the recruiting of qualified labor in the heavy and metal industries, as well as in the building trades, it was laid down that concerns with 10 or more employees, and belonging to these industrial groups, shall undertake the training of apprentices in proportion to the number of skilled workers they employ. School-leaving age in the secondary schools was lowered by 1 year to increase the number of qualified workers.

For the furtherance of the second Four Year Plan several additional decrees were enacted, notably the decree of February 11, 1937, according to which the transfer of skilled laborers in the metal trades can be carried through only under license.⁴⁵ Under previous regulations, transfer from one post to another within the same district did not require the authorization of the labor offices; this exception has now been removed. The new regulations give the labor offices for the first time a monopoly on employment exchange work for an important range of trades.

The decree of June 30, 1937, deals with the reduction of part-time work. It provides that all relief for part-time laborers of less than 30 years of age and with no dependents should be withdrawn.

An ordinance issued on July 23, 1937, to the textile and leather trades, provided that where part-time work is not merely temporary, enough workers can be dismissed to permit employment of the rest on a full time basis.⁴⁶

At the end of 1937 the Labor Office issued new regulations for maintaining the succession of skilled workers in the metal and building industries. The regulations provided for careful inquiries by local labor offices as to those firms in their districts taking on less than their percentage of apprentices, as judged by the average for their particular trade. The offices are to invite these firms to voluntarily increase the number of apprentices they take on. If this invitation meets with no response, then, with the consent of the relevant industrial board, an appropriate number of apprentices may be imposed upon the firm concerned. Where it appears that for special reasons an increase in apprentices is impossible, the industry must pay the Board 50 Rm. for each vacant apprenticeship.⁴⁷

In February 1938, a decree forbade employment of single women under 25 unless they had worked for 1 year either in a household or on a farm. Recently, however, this regulation was changed and the annual contingent of women has been assigned exclusively to agriculture.

⁴⁵ Reichskreditgesellschaft, *Germany's Economic Development for the First Half of the Year 1937*, pp. 32, 33.

⁴⁶ Reichskreditgesellschaft, *Germany's Economic Development at the Turn of 1937-38*, p. 37.

⁴⁷ Reichskreditgesellschaft, *op. cit.*, p. 32.

The decree of June 1938 provided for labor conscription in cases or need, in respect to any man or woman resident in Germany and not of foreign nationality, without regard to age or profession.⁴⁸

The Decree for securing the necessary labor for tasks of especial National importance issued on February 13, 1939, strengthened Government leadership in the field of labor, and invested the Labor Ministry with far-reaching powers, amounting to control over employment. The termination of labor contracts was made dependent upon the consent of the labor exchanges. This restriction tied the workmen to the factories in which they happened to work at the time when the decree was issued.

The decree of April 22, 1939, extended the range of persons required to hold employment books to almost all workers, whether dependent or independent, and includes family members acting as assistant workers.

Decrees issued in September 1939 forbade all workers and employees to leave their jobs without the consent of the local labor office, and lifted all restrictions on hours of work for adult men. They also abolished prohibition on night work for women, and empowered the authorities to remove all limitations governing the employment of women and children under 18. A new decree of December 12, 1939, limited the working day to 10 hours or, with special permission, to 12 hours. Night work for women and for young people was again prohibited.

TAXATION

In 1936 the corporate income tax was increased from 20 to 30 percent. In 1938, it was increased to 40 percent for the years 1939 and 1940. Public utilities owned by states or other government entities are subject to the corporate income tax.

The outbreak of the war brought drastic changes in tax rates. The main increases were: (1) a 50-percent increase in personal income tax rates on incomes exceeding 2,400 marks per annum, on condition that the total tax be not more than 65 percent of income; (2) a "war surtax" amounting to 20 percent of the retail sales price on tobacco, beer, liquors, and champagne, but not wines; (3) a special levy on local and provincial governments equivalent to 15 percent of their present contributions under the income, corporation and turnover taxes collected by the Reich; (4) corporations besides paying an income levy of 40 percent, in addition to other taxes must contribute toward the cost of maintaining enterprises closed by the war.

One of the reasons why the Nazi government has preferred taxation to borrowing as a means of financing the war, was its fear that severe rationing of the consumption goods, along with a shortage of non-rationed consumer goods, might cause inflation. It is hoped that taxes will help to absorb excess purchasing power.

COMPANY LAW ⁴⁹

Management of a German corporation is in the hands of three groups—the managing board, whose duties are principally administrative; the board of directors, or supervisory board; the stockholders, whose influence is exercised at their annual general meeting. Two laws

⁴⁸ Reichskreditgesellschaft, Germany's Economic Development for the First Half of the Year 1938, p. 40.

⁴⁹ Bureau of Foreign and Domestic Commerce, Comparative Law Series, May 1937. See also Reichsgesetzblatt, Part 1, No. 15, February 4, 1937.

enacted January 30, 1937, emphasize the responsibility of the managing board, greatly increasing its policy-making powers. This was apparently in line with the Nazi policy of personalizing business, bringing the responsibility home directly to the chairman of the managing board, who is given power to override the decision of the other members in any controversy. It is further provided in these laws that the managers may refuse requests from directors or stockholders for information about developments within the company and may refuse dividends and build up reserves, regardless of the will of the shareholders as expressed in their general meeting.

The Board of Directors has little control over the management, under the 1937 decrees, aside from the power of appointment and of fixing salaries. It must approve the annual balance sheets, but has little to say about them. The minimum number of directors is 3. The maximum ranges from 7 for a company with capital of not over Rm. 3,000,000 up to 20 for a company with more than Rm. 20,000,000. (Exceptions may be made by the Minister of Justice.) No individual may be a director of more than 10 companies, a provision apparently intended not so much to prevent concentration of power as to prevent a man's taking on more interests than he can handle intelligently.

The 1937 laws contain strict regulations regarding the relationship of holding companies. They are technical, but in general define sharply the relationships between affiliated companies, and prevent abuses through affiliates or holdings of voting stock by dummy corporations. The government's control over holding company operations is made more flexible by the fact that the proportion of stock held in an operating company is not the sole criterion of a holding company. Influence in the affairs of the operating company is also taken into consideration.

An amendment to the old company law, passed in July 1936, permits the Minister of Justice to lift the 10 percent limitation on a company's purchase of its own shares. It is believed that the purpose was to permit certain companies to buy back shares which the government was holding and wanted to get rid of.

APPRAISAL OF THE GERMAN CONTROL SYSTEM

The experience of a war-preparing, totalitarian country with a limited supply of raw materials, labor, and inadequate financial resources is, of necessity, different from that of a country not confronted with the same problem of scarcity. Nevertheless, it is of interest to evaluate the success of the major Nazi control policies to determine the extent to which state intervention has been effective in building up a war economy by means of supervising the volume of production and investments, distribution of raw materials, rationing of consumption, direction of foreign trade, prices, and wages, and in fitting the whole framework into actual war conditions.

THE INDUSTRIAL SITUATION

In spite of the most rigid planning and regulation, crucial difficulties are found in the industrial situation. The hurried remilitarization and complete shift toward a war economy resulted in "full employment" by the middle of 1938. Even before that time the pace of expansion required by the rearmament program could be maintained

only through the utilization of practically all existing reserves and by neglecting to undertake even urgent repair and maintenance work. In the most essential industries, production increases as early as 1938 could be attained only by means of lengthened working hours and utilization of plant capacity far exceeding normal.

The difficulties in further expanding output have arisen from two main sources: lack of raw materials and shortage of trained labor. The most serious difficulty is probably connected with substitute raw materials. Particularly after the inauguration of the Four Year Plan, strains set in in virtually every field. When the large-scale production of substitute materials was initiated, to replace imports, there were reserves of labor and plant. The problem of substitution was one of production costs only, but since 1938 the shortage has extended to these basic materials, with the result that even the volume of substitute materials had to be strictly regulated, and frequent changes in quality became necessary. This required frequent changes in machinery and equipment for the use of substitutes.

In an economy which is suffering from a shortage of labor, further increases in industrial output depend largely on the degree to which plant mechanization can be expanded. Thus, the machinery industry occupies a key position in the German economy. The load upon the machinery industry has been further increased by intensive utilization of existing plant and equipment, which means increased maintenance and replacement, and by the changing quality of the raw material supply, which requires changes in machinery and equipment. Considering also that the basis of trade relations with southeastern Europe has been the exchange of German machinery for raw materials, the government has done everything in its power to fight the weak points in the machinery industries. Nevertheless, the coordination of the various elements shows failures. If one raw material is made available by the authorities, production is delayed because other necessary materials have not been allotted in time or because transportation facilities are needed for other national tasks. For the last few years the establishment of iron quotas has meant a strict "indirect" regulation of machinery production. Lately the regulations have become more and more rigid. There has been an attempt to improve conditions by curtailing the number of types of machinery. The result does not seem to be satisfactory, as the delivery difficulties for all types of machinery continue to increase. In view of the particularly grave shortage of locomotives and rolling stock, the necessity of meeting this shortage is certain to make the situation in the other branches of the machinery industry worse.

Other branches of the producers' goods industries—tin, iron, power, construction, transportation—have experienced similar difficulties.

THE AGRICULTURAL SITUATION

At the time when the construction of the western fortification and the preparation and execution of the Austrian and Sudetenland policy required tremendous additional resources of material and men, the entire agricultural program was thrown out of gear. Owing to the excessive demands on available labor and material emanating from

other sectors of the economy, hardly any support could be given to the agricultural program in the form of machinery construction or adequate transportation. Thus as war preparations increased, the program was limited to the more modest goal of pushing output in those products whose availability from foreign sources was likely to be jeopardized by war.

In appraising the various measures undertaken between 1934 and 1939 it is important to consider the shortage of trained farm labor, which defeated all attempts to increase acreage of typical "battle of production" crops after 1937. When the "battle of production" started in 1934, higher labor requirements incidental to more intensive cultivation could be met without much difficulty, and the planned shift from certain imported products to domestic foodstuffs was accomplished by increased manual efforts. The efficient organization of the Reich Food Estate succeeded within a short time to induce farmers and farm labor by education, as well as by intimidation, to work longer hours and more strenuously. Nevertheless, city-ward migration continued once the rearmament program opened better opportunities in factories.

The official explanation of the failure to prohibit migration to the cities shows that the "blood and soil" concept does not always work out as expected. Explaining why Goering's labor decrees issued in connection with the Four Year Plan do not contain regulations for farm labor, it was stated, "The omission of farm labor has a sound reason. The farm labor problem cannot be solved by wage and other regulations, but only through the mental attitude and willingness of the German compatriots who work together on their soil. Once this attitude becomes indoctrinated through the educational campaign of the Reich Food Estate, there will be enough Germans who will gladly devote themselves to agricultural pursuits. Then the chronic shortage of farm labor will be solved."⁵⁰

Owing to the shortage of labor, every sort of labor-saving device has been considered desirable from the standpoint of national economic policy. The mechanization of German agriculture, however, has very definite limits. The first obstacle is that the machinery industry is not in a position to supply the needed farm machinery. Besides, the shortage is particularly acute on small farms where mechanization is possible only to a very limited degree, and 95 percent of the farms and about 80 percent of the agricultural acreage in Germany are accounted for by peasant holdings.⁵¹ For the present the idea of combining small farms into large units has been rejected for reasons of state and social policy.

The original "battle of production" in agriculture had to be sacrificed on account of the necessary extension of the industrial economy, and the pressing work connected with the rearmament program. There can be no doubt that since 1938 it was not possible even to maintain acreage in general, and production of animal products in particular, on account of severe strain caused by labor shortage. According to reports issued by the Reich Food Minister, there was a reduction during 1937 and 1938 alone of an area capable of supporting more than 360,000 human beings, by reason of the construction of

⁵⁰ "Die Versorgung der deutschen Landwirtschaft mit Arbeitskraeften," ("Farm labor supply in German agriculture"), *Der Vierjahresplan*, February 1937.

⁵¹ Harry L. Franklin, *Wartime Agricultural and Food Control in Germany*, Foreign Agriculture, Foreign Agricultural Relations, April 1940, p. 216.

automobile roads, the building of new industrial plants, the provision of areas for military exercises, and the construction of fortifications on the western frontier.⁵²

Despite the immense amount of effort expended, the percentage of food self-sufficiency in 1938 was officially estimated at only 82 percent, or but little above the level prior to World War I. The fact that the 1938 diet was about 15 percent below that level indicates that part of the apparent increase in self-sufficiency is due to a decline in consumption.⁵³

The volume of Germany's total agricultural production has risen steadily since 1932-33, when it was slightly higher than the 1928-29 level. This increase in total production has been achieved largely through progressive increases in yield for most of Germany's principal farm crops. This development has been facilitated by the heavy reduction in fertilizer prices, increased mechanization, tax assessments, reduction in the hitherto high electric-current costs in many rural areas, a fairly favorable price policy for farm products, and other farm aids of various kinds to stimulate production.⁵⁴

German agriculture seems to be less favorably situated financially, however, than the production situation would imply. According to a profit-and-loss balance sheet for German agriculture during the farm year 1937-38, there was an income deficit of about 4.5 billion Rm.⁵⁵

In spite of all official German claims, it is safe to say that this ultimate goal of food freedom has not been attained, and only initial steps could be undertaken in the direction of food autarchy. But the failure to win the battle for food freedom in itself is by no means a reflection on the efficiency of the Reich Food Estate. There can be no doubt that its rigid organization itself represents an accomplishment in times of emergency. Likewise, it is important to note the tremendous efforts that have been undertaken under its guidance and orders, particularly in view of the difficulties arising from the rearmament and self-sufficiency program in other areas of the economy.

In view of the extent of the labor shortage during the last few years it is not surprising that the farm production program could not be extended; rather, it is remarkable that the output of crops and animal products requiring much labor could be maintained as well as it was. This result was possible only by intensification of efforts at labor-saving.

THE LABOR SITUATION

It may be of interest to indicate the net effects of the economic policy on the labor situation in industry and agriculture. The official mouthpiece of the National Socialist Party, *Die deutsche Volkswirtschaft*, characterized labor conditions as follows: "Lately a number of symptoms of overexertion of workers and employees have become apparent. Firstly, the grippe epidemic has reached such an extent

⁵² Reichskreditgesellschaft, *Economic Conditions in Germany in the Middle of the Year 1939*, p. 12.

⁵³ Wartime Agricultural and Food Control in Germany, *Foreign Agriculture*, Office of Foreign Agricultural Relations, April 1940, p. 199.

⁵⁴ *Ibid.*, p. 216.

⁵⁵ Reichskreditgesellschaft, *op. cit.*, p. 17.

that it can only be explained by increased susceptibility owing to physical and psychological weariness. Secondly, extreme irritability on account of nervous strains resulting from overexertion is a common observation. Thirdly, the unexcused leaves and attempts to stay away from work for flimsy reasons increased sharply. This also can only be attributed to the need for relaxation and recreation from overstrains. The overexertion of the workers is, in the last analysis, only another symptom for the general overutilization of all resources which, simultaneously, lead to scarcity of goods, slowing down of deliveries and labor shortage."⁵⁶

In agriculture, the stringent regimentation of labor has failed to solve the problem of farm labor. Due to the difference in wages between urban and rural workers and between working and living conditions in the city and on the farm there has been a marked "flight from the land" in recent years. It has been estimated that between 700,000 and 800,000 agricultural workers have left the farm for urban centers, or at least given up farm employment, since 1933.⁵⁷

The problem of an adequate farm-labor supply has become more acute since the outbreak of the present war, with hundreds of thousands of farmers called to military service. To take care of the situation, from 800,000 to 1,000,000 foreign agricultural workers, mostly Polish, are employed, in addition to some 300,000 Polish prisoners of war.⁵⁸ Whether they will prove to be satisfactory substitutes for the German peasant-cultivators and experienced farm laborers now in military service is questionable.

ARE PRICES STABLE?

In appraising the effect of German price control it should be remembered that in a totalitarian economy where the principle of free adjustment of prices has been abandoned, prices lose their function as automatic regulators of production. Furthermore, it must be noted the mechanism of price control "operates within the framework of an omnipotent and omnipresent state with absolute authority, which has suspended all kinds of freedom of expression by citizens and habeas corpus rights also."⁵⁹ Furthermore, it is not possible to obtain reliable data with regard to prices; official statistics are incorrect inasmuch as they often quote prices of goods which are not available on the market, and do not take into account the deterioration in quality. While official statistics claim that "it has to a large extent been possible to maintain price stability with respect both to wholesale prices and the cost of living";⁶⁰ and "prices in Germany since the beginning of the war have scarcely changed,"⁶¹ outside observers give an entirely different picture:

The situation in Berlin's wholesale markets has been getting worse ever since the beginning of the war. Heavier taxes, underhand trading, illegal pricing, and "linked selling" are become the rule rather than the exception. Strict regulations have been unable, so far, to cure abuses that stem directly from the acute shortage of numerous commodities and from the rationing system itself. * * * There

⁵⁶ March 2, 1939.

⁵⁷ Harry L. Franklin, *op. cit.*, p. 213.

⁵⁸ *Ibid.*, p. 213.

⁵⁹ Karl Brandt, *The German Fat Plan and its Economic Setting*, Stanford University, 1938, p. 312.

⁶⁰ Reichskreditgesellschaft, *op. cit.* p. 27.

⁶¹ Weekly Report of the German Institute for Business Research, March 13, 1940, p. 41.

is a legal price for each type of food but there are also unofficial prices, which are paid for special quality goods.⁶⁶

Another dispatch states:

German housewives complain that despite drastic police regulations forbidding increases in prices, only those who can afford to pay higher prices can obtain better grade vegetables and fruits. Dealers complain that they must buy staples they do not need in order to obtain smaller quantities of goods they know they can sell. Police watch markets and try to prevent such deals. Now the dealers are trying to arrange secret meeting places to negotiate deals among themselves outside market quarters.⁶⁷

⁶⁶ Dispatch of the Berlin correspondent of the New York Herald Tribune, November 6, 1939, quoted in German Food Consumption and Requirements, January 1940, p. 35. Office of Foreign Agricultural Relations.

⁶⁷ Dispatch of Sigrid Schultz, Washington Times-Herald, November 5, 1939, quoted in same publication.

PART III

REGULATORY EXPERIENCE IN FRANCE

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REGULATORY EXPERIENCE IN FRANCE

HISTORY AND CHARACTER OF THE FRENCH CARTEL MOVEMENT

ATTITUDE OF GOVERNMENT

As early as 1776 there arose in France a strong sentiment against combination control, which found expression in Turgot's edict abolishing the merchants' and manufacturers' guilds.¹ Attempts to reestablish the guilds resulted in the act of March 2, 1791, shortly after the outbreak of the Revolution, which provided that:

Every person shall be free to engage in such business or to exercise such profession, art, or trade as he shall see fit.²

This was supplemented by Chapelier's Act of June 14-17, 1791.³ This Act prohibited all agreements and even any meetings for the discussion of common interests either by masters or by men, stating that such meetings were "unconstitutional and contrary to liberty and to the Declaration of the Rights of Men."⁴

Regarding the significance of this statute, which underlies all subsequent legislation on competition, and is characteristic of the socio-economic background of that period, the following remark is relevant: "It should first be remembered that the purpose was not to lay the foundations of a new economic order with boundaries preconceived and outlined by legislature. Like most legislation, * * * it was designed rather to cure certain recognized ills of the past. The particular evils, in this case, were the complete guild domination and governmental interference with production by minute regulation of industry. The oppressive grip of the guilds, manifested chiefly in their exclusionary rules depriving outsiders of a livelihood and their antagonistic attitude toward invention and innovation, delaying the devitalization of production, had already been felt during the ancient regime."⁵

A number of provisions are embodied in the French Penal Code for the regulation of industrial combinations and prevention of unfair trade practices. Of these the most important is Article 419, passed in 1810, which, as amended in 1926, reads:

¹ Ordinance of February 1776, concerning the abolition of merchants' and manufacturers' guilds (generally known as Turgot's edict), Isambert, *Recueil général des anciennes lois françaises*, vol. 23, 1826, pp. 370 ff.

² English translation of the Turgot edict, in "The Case of Monopoly versus Competition—Source Materials in Comparative Law", Huger W. Jervey and Francis Deák, Columbia University School of Law, New York City, 1934, vol. 1, pp. 1-5.

³ Description of the historical and economic background of Turgot's edict, see Sauzet, "Essai historique sur la législation industrielle de la France 1 (L'ancienne régime)," in 6 *Revue d'économie politique* (1892), 353-402.

⁴ Statute concerning the freedom of industry and commerce, March 2-17, 1791, *Lois et Actes du Gouvernement*, vol. 3, 2 ff. Quoted by Huger W. Jervey and Francis Deák, *The Case of Monopoly versus Competition*, Columbia University Press, New York, 1934 (mimeo.), p. 5.

⁵ Jervey and Deák, *op. cit.*, p. 11.

⁶ Review of the Legal Aspects of Industrial Agreements, League of Nations, Economic and Financial Section, Geneva, 1930, p. 41.

⁷ Francis Deák, *Contracts and Combinations in Restraint of Trade in French Law*, a comparative study, Iowa Law Review, January 1936, p. 398.

ARTICLE 419

All persons:

(1) Who, by wrongful or calumnious reports deliberately disseminated among the public, by market bids made for the purpose of upsetting quotations, by offering better prices than those asked by the sellers, or by any fraudulent means or devices whatsoever;

(2) Or who by exercising or attempting to exercise, either by individual or collective action, any influence on the market for the purpose of acquiring profit other than that derived from the natural operation of the law of supply and demand;

Directly or through a third person promote or attempt to promote an artificial rise or fall in the prices of foodstuffs and other commodities or negotiable securities, either public or private:

Shall be punished with a term of imprisonment varying from two months to two years and a fine varying from 2,000 to 100,000 francs.

The Court may also forbid the offender to reside in a certain place for not less than two and not more than five years.⁶

Article 420 of the Penal Code, also passed in 1810, provided heavier penalties if the commodities are breadstuffs, bread, or wine or other eatables. In 1852, an Executive Decree prohibited mergers of mining concessions without authorization of the Government, declaring this to be a criminal offense under Articles 414 and 419 of the Penal Code; this was directed chiefly against the coal industry.⁷

The general character of the period during which Article 419 of the French Penal Code was passed has been described as follows:

* * * Article 419 of the French Criminal Code, is, in substance, a cornering statute. It reflects, of course, the then dominant, extreme laissez-faire philosophy, based on the assumption that price should be determined solely by the "natural course of competition", free from external interference. But the code provision was * * * directed against combinations in the modern sense of the word. The economic structure of the early nineteenth century France did not generate any combination or concentration movement. The country was predominantly rural and agricultural. What industry France possessed was diversified, individualistic handicraft. * * * There were, as yet, no railroads, which later broke down the localization of trade and enabled producers to penetrate distant markets. To this might be added the sobriety, traditional thrift, and individualism of the French people, which, despite the profound change in economic life introduced by the industrial revolution, did not encourage a combination movement. Consequently, combination in France on the scale and in the variety of forms and practices known to American business has been rather exceptional.⁸

After about the middle of the century the negative attitude toward concerted action was relaxed, as reflected in the enactment in 1884 of the law regarding the establishment of professional syndicates which repealed Chapelier's Act and provided that:

ART. 2. Professional syndicates or associations, even if comprising more than twenty persons, exercising the same profession, or engaged in similar callings or in connected occupations which cooperate in the production of certain goods, can hereafter be freely created without authorization of the Government.

ART. 3. The exclusive purpose of professional syndicates is the study and protection of economic, industrial, commercial, or agricultural interests.⁹

Although the powers of these syndicates were narrowly limited, the fact that Criminal Code penalties against concerted action were suspended and the right of association among producers, sellers, and laborers received some recognition, represented a revolutionary change,

⁶ Statute of December 3, 1926, 4 D. P. (1927) 145. Translation in English, In Report on Review of the Legal Aspects of Industrial Agreements, prepared for the Economic Committee of the League of Nations (Economic and Financial Section) 1930, p. 42.

⁷ Decree of October 23, 1852, No. 4567, art. I. Quoted in U. S. Department of Commerce, Bureau of Corporations (now merged with Federal Trade Commission), Trust Laws and Unfair Competition, Washington, 1915, p. 273.

⁸ Francis Deák, op. cit., p. 415.

⁹ Jervy and Deák, op. cit., p. 11.

reflecting the evolution of French economic institutions. Industrialization was progressing, and the development of railroad communication altered market conditions. Also, after the middle of the nineteenth century the well regulated and expanding German industry was an important factor to cope with.

The change in attitude toward concerted action is reflected in the fact that after the 1890's criminal prosecutions became rather exceptional, while civil actions have increased.¹⁰ "The new judicial tendency in civil actions manifested itself chiefly in: (1) A consideration of the purpose of the combination in the light of conditions in the industry; (2) a more realistic approach to the market position of the combination, as affected by potential or outside competition, and the nature of the commodity involved; in other words the courts henceforth attempted to delimit the 'monopolizable area;' and finally, (3) in a reappraisal of the price problem. The ultimate result of the process of reinterpretation which, incidentally, began more or less contemporaneously with the enactment of the Sherman law, was what might be called a 'rule of reason,' seeking to distinguish between 'good' and 'bad' combinations."¹¹

The Civil Code of France has a number of provisions which might be applied to industrial combines,¹² the most important of which are—

ART. 6. Laws which concern public order and good morals may not be set aside by particular agreements.

ART. 1131. An obligation that is without ground or is based on a false ground or an unlawful ground can have no effect.

ART. 1133. The ground is unlawful when it is prohibited by law or when it is contrary to good morals or public order.

ART. 1172. Every condition of an impossible thing, or contrary to good morals, or prohibited by law, is null and void.

ART. 1382. Every act committed by an individual resulting in injury to another involves an obligation on the party responsible for its occurrence to make reparation therefor.

It is clear that the French law was not intended to prohibit all combinations, and the Act of 1926, which amended Article 419 of the Penal Code, seemed to encourage a distinction between "good" and "bad" trusts, punishing only those whose object is to "acquire profit other than that derived from the natural operation of supply and demand."¹³

¹⁰ Deák, *op. cit.*, p. 434.

¹¹ Deák, *op. cit.*, 435.

¹² Cases discussed in *Trust Laws and Unfair Competition*, *op. cit.*, pp. 269-273. Cases also discussed by Jervey and Deák, *op. cit.*

¹³ See Report on Review of the Legal Aspects of Industrial Agreements, prepared for the Economic Committee of the League of Nations (Economic and Financial Section) 1930, pp. 43-46, which states in part:

"As we have just seen, cartels or agreements formed by manufacturers and traders to regulate production and prevent unfair competition are not subject to any special regulations in France. They are governed by the provisions of the common law now in force.

"Agreements of this kind are accordingly allowed, provided they do not pursue any unlawful aim. If, however, they are detrimental to the public interest, they may be cancelled by the Courts at the request of an injured party, in virtue of Articles 6 and 1131 of the Civil Code which prohibit any agreements contrary to public policy or having an unlawful object.

"Moreover, as we have seen, the parties to such agreements may be subject to criminal prosecution, under Article 419 of the Penal Code, if they promote or attempt to promote an artificial rise or fall in the prices of foodstuffs and other commodities or of transferable securities.

"When the Act of December 3rd, 1926, amending the text of Article 419 of the Penal Code was under discussion, the 'Rapporteur' of the Committee of the Bill in the Chamber of Deputies accurately summed up the present doctrine in the following words:

"Where there is no criminal intent there is no criminal offence.

"As regards trading agreements, the Rapporteur of the Committee of the Chamber of Deputies stated:

"To punish all combinations without distinction would be contrary to the most obvious economic necessities."

Footnote ¹³ continued on following page.

It is also important to note that where there is no criminal intent, there is no criminal offense, under the French doctrine.

THE COMPTOIRS

Owing to the liberal interpretation of Article 419 of the Penal Code, cartel-like combinations were allowed to develop in France. The specific cartel-form, the "Comptoir" has assumed the following forms in France: "It is an incorporated company established for the purpose of regulating production and prices in the industry concerned. This may be done by the creation of a common selling agency; by regional distribution of the market over the members; by price-fixing; by restricting the total output of the trade through a quota system; by providing for outlets on external markets. Combinations following these lines of action had developed before the war, especially in the pig-iron and the iron and steel industry, in some line of the chemical industry, in the plate-glass industry, in the salt industry, and in a few others. As a rule the influence of the central body on common policy was much weaker than with German cartels."¹⁴

The oldest and best-known cartel-like organization in France is the Comptoir de Longwy, organized in 1876 as a joint-selling organization for the pig-iron producers of Lorraine, who found it difficult by individual effort to overcome the prejudice against Lorraine pig iron. Its field of operation was not very great, as compared with modern cartels, as it handled only the surplus production of its members and sold to smaller plants which did not possess or control their sources of raw material.¹⁵

Some French authorities writing on the subject of French cartels pointed out that the French "comptoir" might be looked upon as a loose version of the German cartel, adapted to French psychology and industrial scope, and lacking, as a rule, the disciplinary features characteristic of the German cartels. The French comptoir reached the highest degree of development when the exclusive selling rights of the output of its members was obtained.

During the war the comptoirs disappeared or were used by the Government to control industry. After the armistice some of the comptoirs were revived, among others the Comptoir de Longwy in 1919, but it disappeared again at the end of 1921 owing to the disorganization of the industry. The most important comptoir in the iron and steel trade organized since the war is the Comptoir Siderurgique which went out of existence in 1922, but was revived in 1925 and has been in

Footnote ¹³ continued.

"It is interesting to give here some extracts of the comments made on the Act of 3rd December 1926 by the Dalloz Law Reports:

"Certain combines are therefore legitimate. According to a formula which has now become classical, in spite of its triviality, there are "good and bad trusts," or, we should say, good and bad combines, since not all combines are trusts.

"Accordingly, instead of punishing all combines which manipulate the prices of commodities or negotiable securities, either public or private, the Act of December 3rd, 1926, only punishes those whose object it is to "acquire profit other than that derived from the natural operation of supply and demand." It is this profit as thus defined which constitutes the criterion by which a distinction is made between lawful and unlawful combines."

"... a very large number of industrial and commercial agreements exist in France. These are of various kinds. In some cases, they take the form of regulations issued by employers' federations or of joint purchasing and sales organisations whose business is conducted in the light of day. There are also private and secret agreements regulating production and selling zones or home or foreign prices, etc. Their exact number is unknown, as they are generally kept strictly confidential by the parties concerned."

¹⁴ Louis Domeratzky, *The International Cartel Movement*, Bureau of Foreign and Domestic Commerce, Trade Information Bulletin no. 566, p. 28.

¹⁵ Domeratzky, *op. cit.*, p. 27.

recent times the most important association in the French steel industry.¹⁶

POST-WAR CHANGES

The impact of the annexation of Alsace-Lorraine and the occupation of the Saar district caused thorough-going changes in the French economy. The additional capacity acquired by the iron and steel industry strengthened the combination movement, particularly due to the limited domestic demand, and the difficulties to cartelization experienced by the export trade. Inflation was an additional factor making for concentration and rationalization, the essential object of which was directed toward export interests rather than the home market. The best example of vertical combinations including a large range of production processes is that of the Schneider concern in the iron, steel, and armament industries, with the old firm of Le Creusot as its base.¹⁷ Other vertical organizations of a regional or local character, handling a wide range of iron and steel products, are the "Longovica," handling not only the export trade of iron and steel, but also tube, screws, bolts, etc.; the "Nortrilor," the "Columeta," and the Société Métallurgique des Terres-Rouges.¹⁸

GOVERNMENT PRICE AND PRODUCTION CONTROL IN RECENT YEARS

In order to facilitate enforcement of Article 419 of the Penal Code, a comprehensive bill was introduced in the Senate by the Government, in 1932, which would have required registration with the Government by "any industrial or commercial combination," the measure to apply to—

all combinations, agreements, associations, or collective resolutions, made or entered into under whatever form, among manufacturers or merchants, for the purpose of imposing common regulations upon their industrial or commercial activity, in whole or in part.¹⁹

The bill, which failed to pass, was directed especially toward cartels for regulation of production, distribution of orders, allocation of territory, fixing of prices and terms of sale, cross licensing of patents and technical processes, and toward import and export cartels.²⁰

The change in the official French policy in accepting cartels as important devices in the struggle for the international markets was carried further early in 1935, with the introduction of a bill which would have provided for compulsory cartel agreements under Government regulation. This bill provided that "if a group of employers representing, as a rule, two-thirds of all concerns and three-quarters of the total sales of the industry, during the preceding year has adopted an agreement for the purpose of regulating trade conditions for a limited period, such an agreement can be made binding upon all members of the industry by governmental decree. The agreement may include a wide variety of measures for adapting production to the situation of the market, at home and abroad (including reduction of output, hours of work, and inventories); restriction of production to

¹⁶ Domeratzky, *op. cit.*, pp. 28, 29.

¹⁷ Karl Pribram, *Cartel Problems*, Brookings Institution, Washington, 1935, p. 279.

¹⁸ Domeratzky, *op. cit.*, p. 29.

¹⁹ Bill Relating to Commercial and Industrial Combinations, introduced in the Senate by the Government, March 3, 1932, *Journal Officiel*, 1932, Annexe No. 182; 53 *Journal des sociétés civiles et commerciales*, 1932, 378 ff.

²⁰ Report of the Minister of Justice and of Commerce, submitting the Bill, 53 *Journal des sociétés civiles et commerciales*, 1932, pp. 371 ff.

existing plants; conclusion of collective labor agreements; fixing of minimum standards of quality; assessment of contributions; and flotation of loans."²¹ To avoid undue governmental interference with economic life, the duty of examining the merits of the proposed agreement was to be entrusted to an "Arbitration Committee" composed of the heads of independent industrial, commercial, and financial organizations. This bill failed to pass, after being adopted by the lower chamber.

The lack of coordination between productive capacity and demand led to the adoption of a number of measures regulating specific industries and agriculture, including wheat control legislation, provisions for confiscation of wheat surplus in an effort to reduce production, and the prohibition of new flour mills or increase in grinding capacity.

A decree law on October 30, 1935, authorized a compulsory industrial agreement for the silk manufacturing industry if subscribed to by two-thirds of the manufacturers, representing three-fourths of the means of production; but a vote in the industry in December 1935 failed to obtain the required support. A bill for compulsory cartelization of the spinning industry was introduced in December 1935. A decree for control of production of naval stores was published on March 29, 1936. A law dated March 22, 1936, prohibited the opening of new shoe stores or factories, or change in size, increase, or displacement of plants for 2 years, without authority of the Minister of Commerce and Industry. A law on March 22, 1936, prohibited the establishment of new one-price stores during the period of 1 year; stores already established are prohibited from creating new departments for the sale of one-price merchandise or from establishing new branches.²²

On June 6, 1936, the Blum government announced its initial program in which labor legislation occupied an important part. Legislation sponsored for the benefit of the worker included: limitation of labor hours to a maximum of 40 hours per week for manual and office workers, without regard to sex or age; annual paid vacations of not less than 15 days, including at least 12 working days, to which the worker is entitled after a year's continuous service in the same establishment; and collective agreements to be made at the request of an interested trade or labor organization under the auspices of the Minister of Labor.²³

A National Wheat Board was created by the law of August 15, 1936, for the control of prices, production, marketing, and disposal of surplus wheat. Provisions were made in the law for increasing the importance of wheat cooperatives as well as curbing the activities of private grain dealers. The new scheme was considered the most complete and strongest government intervention so far attempted in French agriculture.²⁴ The Wheat Board was given a monopoly of the import and export trade in wheat, flour, and cereals.²⁵

The Coal Act, passed on August 18, 1936, empowered the Minister of Mines to fix the prices of coal and to grant subsidies to mines that are inadequately exploited.

²¹ Karl Pribram, *op. cit.*, p. 168.

²² Journal Official, March 23-24, 1936.

²³ Commerce Reports, August 24, 1936, p. 686, Bureau of Foreign and Domestic Commerce.

²⁴ Foreign Crops and Markets, November 2, 1936, p. 513, Bureau of Agricultural Economics.

²⁵ Trust Laws and Unfair Competition in Foreign Countries. Annual Report of the Federal Trade Commission, 1937, pp. 114-115.

The proposal to assume State control over coal-mining is doubtless partly due to depression in that industry. Some 65 percent of its costs of production are labor costs, and it has been particularly hard hit by their steep rise as a result of the recent social legislation. The main objective of the Government is to keep the price of coal low; * * * compulsory amalgamation of coal-mining companies has now been enacted, and the State has a determining voice in the fixing of prices. This assumption of power has already exercised a practical effect. As a result of the increase of labor costs following the new social legislation, the coal companies demanded a rise of 20 francs per ton in prices; but the Government only sanctioned an increase of 9 francs. In compensation for the consequent contraction of profits on coal output, the Government agreed to a considerable reduction in import quotas; and the new Coal Mines Bill envisages State subsidies to the central coal selling organization. In the new Bill the State attempts to realize the rate of profit in the different mines; thus, in future, it will have increasingly to intervene in the financial affairs of the mining companies.²⁶

The following interpretation of "The Economist" placed upon the multitude of decrees passed by the French Government furnishes an interesting background to the economic legislation of the period under review, and its place in France's economic history:

The sweeping democratic victory in the French General Election last spring has speedily led to an apothecosis of the State, in the economic as in the social sphere. When the French Chamber rose for the summer recess the Prime Minister, M. Leon Blum, was able to point to an extraordinary harvest of legislation in a short first session. In particular, the economic measures passed by the Chamber have been designed to extend very widely the grip of the State on French industry, and at the same time to place upon the State and industry joint responsibility for the well-being of broad sections of the community.

This intervention by the State in important industries, however, is by no means an innovation in post-war French economic policy. It was largely owing to M. Poincaré's initiative that the State assumed for itself a certain control over such important branches of French industry as the potash, fertilizer, and petroleum industries, in which it directly controls a large proportion of the output. But M. Poincaré's reasons for State intervention in industry differed fundamentally from those of the Popular Front regime. He and his successors were dominated primarily by military considerations, particularly by the desire to assure to France adequate supplies of vital raw materials—potash, nitrates, and petroleum—through State control of those industries. This period of "active" participation was followed, during the depression, by a more "passive" one, mainly associated with the name of M. Tardieu. During that period credits were placed at the disposal of the depressed industries from an apparently inexhaustible reservoir of Budget deficits, in order to prevent the collapse of certain big industrial concerns. * * * To safeguard its interests, the State had gradually to take part in the running of these great concerns, but its participation was nevertheless involuntary. Its aim was to hand back control to private enterprise as soon as possible.

The economic legislation of the Popular Front Government, by contrast, is based on the contention that the State is in a better position than private individuals to run industrial concerns of nation-wide extent and to safeguard the interests of the majority of the community. For the leaders of the French Government the new economic laws are not emergency measures but the beginnings of a complete reform of the country's economic organization.²⁷

In line with the program of the Blum Cabinet to nationalize war industries, the *Journal Officiel* announced on March 13, 1937, that the Creusot works of the Schneider armament works had been expropriated by the government.²⁸ On March 22, the government took over two of the largest airplane factories and ordered expropriation of a third.²⁹ The Popular Front coalition decreed on August 31 the nationalization of the country's railroads. The reorganization agreement between the French Minister of Public Works and representatives of the five privately owned main line railways, the two State-owned railways, and the two Paris belt line companies provided

²⁶ London Economist, August 29, 1936, p. 383.

²⁷ London Economist, August 29, 1936, p. 382.

²⁸ New York Times, March 14, 1937.

²⁹ Washington Post, March 23, 1937..

that the new State-controlled Société Nationale des Chemins de Fer Français will take over all main line railways, acquire all their assets, assume all their obligations, and will operate them as a unit until January 1, 1983, at which time they revert to the State.³⁰

A law passed on February 15, 1937, declared illegal all price increases on foodstuffs, merchandise, and services of prime necessity, above the level of August 1, 1936, unless justified by a rise in the price of raw materials or an increase in service charges. A national price surveillance committee was set up to fix prices, in agreement with wholesalers and retailers. A decree on July 1, 1937, forbade an increase in prices or service charges above those in effect on June 28, 1937. Coal price fixing has already been mentioned (see p. —). A National Wheat Board was created by a law on August 15, 1936, to control production, fix prices, apportion sales to millers, provide credit, and grant export subsidies when necessary, and to have a monopoly of the import and export trade in wheat, flour, and cereals.³¹

Acts dated June 30, 1937, and April 13, 1938, authorized the Government to take by decree any steps required to insure repression of attacks on the credit of the State, the combating of speculation; and to promote economic recovery, the control of prices, the balancing of the budget, and the defense of the reserve of the Bank of France, without control of exchange. Under this authority a number of decrees have been issued. One dated June 30, 1937, modified the Monetary Law of October 1, 1936. Another decree, also dated June 30, 1937, prescribed duties of the Departmental Commission of Price Control and prohibited any increase in the wholesale, semiwholesale, or retail prices of goods and foodstuffs, or in the price lists applied in industrial and commercial enterprises which were in force on June 28, 1937. The new provisions superseded those of the Price Control Act of August 19, 1936.

Numerous protests against the prohibition of increase in price resulted in some exemptions; and the decree was further relaxed by a decree on November 7, 1937, which authorized retail price increases resulting directly from higher wholesale prices, transportation charges, and taxes. A decree on April 4, 1938, provided for establishment of a commission to study ways and means to effect control of production in French industry.³²

A law dated October 5, 1938, authorized the Government to issue decrees having the force of law, and to take measures intended to bring about the immediate economic and financial rehabilitation of the country. A number of decrees have been issued. The system of price control instituted in 1937 has been modified. Any increase above existing levels in the retail price of goods or in the charges for services rendered to individuals was prohibited unless authorized by price supervisory committees (certain food and perishable goods excepted). Increases in the wholesale or semiwholesale price of industrial products may be prohibited by decree, especially if sales are made through cartel organizations or under agreements between producers, including international agreements; or if the goods are imported and subject to quota regulations. Decrees also included regulations as to the marking of prices and goods offered for retail sale.

³⁰ Bureau of Foreign and Domestic Commerce, Commerce Reports, November 27, 1937.

³¹ Federal Trade Commission, Annual Report, 1937, pp. 114-115.

³² Federal Trade Commission, Annual Report, 1938, p. 132.

The Government was authorized to raise the selling prices of monopoly products and to increase direct and indirect taxes in order to adjust them to present prices of goods and services.

WAR EMERGENCY MEASURES

Mobilization of France's man power and resources for war was accomplished by a few general measures, the first undertaken on July 11, 1938, prior to the signing of the Munich Pact. These laws included measures for provisioning the population, for the requisition of railroads for military purposes, for speeding up industrial production to potential war needs, and a general prohibition of export of agricultural products.³³ A law of March 19, 1939, authorized the Government to issue decrees approved by the Council of Ministers, which may be necessary for the defense of the country. A series of decrees issued thereafter provided among other things for raising weekly working hours in defense enterprises to 60 hours, increased taxes to set up a bureau of military production to coordinate munitions work, etc. A decree on April 21, 1939 limited profits which may be made by suppliers of materials to be used for the national defense; the Government was empowered to collect certain percentages of profits, varying with the amounts of the transactions.³⁴ While these measures helped to mobilize the country's industrial equipment the fact that control over production was not centralized caused a great deal of administrative confusion.

In each of France's 90 provinces, a committee for agricultural production was established by the regulation of September 3, 1939. The function of the committee was to advise farmers to adjust farm output in line with national food requirements, and to facilitate measures providing for the requisite agricultural labor, draft animals, fertilizers, seed, and fodder.³⁵

A decree of September 1, 1939, prohibited the importation of any foreign commodities, except gold, into France or Algeria. Foreign merchandise not subject to a quota arrangement or import prohibition prior to September 1, and shipped before that date, could obtain exemption if declared for consumption and not for merchandising. Exports of a number of agricultural products was prohibited by a decree of August 29, 1939. The prohibition applied to all goods on French territory, even if an export or reexport declaration had been made.³⁶

The decree of September 9, 1939, prohibited imports except when a certificate was obtained proving either that the delivery of foreign exchange for such imports had been authorized by the Office of Foreign Exchange or that no settlement in foreign exchange was required.

Under a decree of September 1, any increase in production or in wholesale or retail prices of commodities was prohibited. This decree did not apply to agricultural prices which were decisions made or approved by the Ministry of Agriculture, nor to agricultural products sold directly by farmers themselves. A decree of September 9 created National and Provincial Committees for Price Control. It was stated that increases in prices would be allowed after consultation

³³ *Journal Officiel de la République Française, Lois et Décrets*, July 13, 1938, pp. 8330-37.

³⁴ Federal Trade Commission, *Annual Report*, 1939, pp. 156-157.

³⁵ Harry L. Franklin, *Wartime Control of Agricultural Trade and Production in Beligent Countries*, Foreign Agriculture, Office of Foreign Agricultural Relations, November 1939, p. 507.

³⁶ Office of Foreign Agricultural Relations, *Foreign Crops and Markets*, December 29, 1939, pp. 732, 733.

with the Inter-Ministerial Price Committee, which was created by the decree of September 30, 1939.³⁷ Despite these regulations wholesale prices of foodstuffs and raw materials in April 1940 stood 39 percent above those in August 1939.

The general mobilization order of September 2, 1939, called to arms 5,500,000 Frenchmen out of a population of 38,500,000.³⁸ The withdrawal of such a large number of men dealt a heavy blow to the country's productive capacity; the index of industrial production dropped from 100 to 50 in September 1939,³⁹ and in agriculture the autumn sowings suffered so much from the absence of men that it was estimated at the beginning of the spring of 1940 that only 30 percent had been successful.⁴⁰ To speed up production and to save the harvest from disaster over a million men had to be called back from the fronts. To meet the demand for labor the 60-hour week, was legalized and under emergency conditions the 72-hour week and the 12-hour day were permitted. In February 1939 the government prohibited the migration of farmers and rural workers to cities. Efforts were also made to train and employ women, and by the end of March 1940 women constituted 29 percent of the personnel of state-owned establishments.⁴¹

The system of calling up recruits not by age groups but according to previous military training aggravated the difficulties of the industries trying to speed up their production schedules. Since the military specialists who were called first represented the older age groups, the result was that men in responsible positions, as well as skilled workers, had to discontinue their work, while the inexperienced young men were left behind. Unfortunately, the armaments industries were particularly affected, and had to try to operate with unskilled labor.

A maze of decrees were issued by the French Government on February 29, 1940, providing for the stimulation of production and the restriction of consumption. Nevertheless, 6 months after the outbreak of the war production was still below pre-war levels and consumption did not decline substantially. The measures adopted for the limitation of foodstuffs were indirect. The sales of bakers, expenditures in restaurants were regulated, and economy in the consumption of petroleum and alcohol were encouraged. A general census was to take place preparatory to the issue of ration cards, the use of which was not scheduled until May 1940. To stimulate agricultural production, seed corn and fertilizers were to be cheapened; also the scope of employment for women in industry was to be widened. To replenish the reserves behind the currency, plans were made to revalue the gold stock of the Bank of France in closer accordance with the actual price of gold.⁴²

A French Ministry of Supplies was established on March 21, 1940, in line with the growing importance of problems relating to supplies for the army and the civilian population. From the beginning of the present war until the new ministry was established, matters of supplies and provisioning were handled by the Ministry of Agriculture. The Ministry of Supplies was charged with assuring supplies of agricultural products and foodstuffs for the army and civilian population,

³⁷ Office of Foreign Agricultural Relations, *Foreign Crops and Markets*, December 29, 1939, p. 733.

³⁸ *The Round Table*, London, Macmillan, June 1940, p. 550.

³⁹ D. H. Popper and J. C. de Wilde, *Wartime Economy of Britain and France*, Foreign Policy Reports, July 15, 1940, p. 119.

⁴⁰ *The Round Table*, op. cit.

⁴¹ Popper and de Wilde, op. cit.

⁴² *London Economist*, March 9, 1940, p. 415.

funds for the work to be provided either through direct appropriations or by the transfer from Government agencies of funds to be used for purposes falling within the scope of work of the Ministry of Supplies. Provisioning services, agencies, and personnel attached to the Ministry of Agriculture prior to the passing of the decree were transferred to the Ministry of Supplies.⁴³

The ineffectiveness of Government control over industry in France is evident from the extent to which private industry was allowed to pursue its own interests, even when these ran counter to the welfare of the entire nation. This may be illustrated by the iron-ore agreements between French ore industrialists and German coal interests.⁴⁴ The exchange of these raw materials have served as a basis for profitable business transactions between France and Germany, dating back before the World War. These business relations, in the course of which German concerns were able to acquire control over important mines in the Saar region and in French Lorraine, continued undisturbed regardless of whether the Saar region was under French or German domination. In 1932 a commercial treaty based upon the exchange of ore from French Lorraine for German coal was concluded. The ore deliveries were first limited to 100,000 tons per month, but in 1934 they rose to 400,000 tons to help Germany's rearmament. A German concern joined the Société Lorraine Minière and Métallurgique, the chief supplier of material for building the Maginot Line. As the processing of the French ore was done by the German concern, the finished product that went into the Maginot Line was furnished by German manufacture, while French ore industries contributed their share to building up the German defense system.

Following the occupation of the Rhineland in 1936, ore shipments stopped for awhile, and efforts were made by Léon Blum to cancel or modify the agreements, but sharp protests came from the Comité des Forges, whose presidents were supporters of the Fascist Croix de Feu organization. They pointed out the advantages of trading with Germany and the number of workers who would have become unemployed by the shutting down of the mines, thereby quieting the opposition. Following the outbreak of the present war, Franco-German holding companies were organized in Luxembourg and Belgium, for the reexportation of ore to Germany. Thus ore shipments continued throughout the war to Germany and to Spain where similar companies were organized. Trading with Germany offered definite advantages over cooperating with the industrial mobilization scheme of the home country. Mobilization, if adequately conducted was bound to involve heavy taxes, and plant expansion would soon have meant heavier overhead expenses.

The shortsightedness of industrial interests had disastrous consequences. Realizing the necessity of decentralizing industry, the Minister of National Defense was empowered to prohibit the building or expansion of plants. Nevertheless, nothing was done to implement this power, when, for example, industrial interests protested against extending fortification in northern France because it involved moving factories to other parts of the country.

The aircraft industry, it is said, did its best to prevent the purchase of American planes because they feared that it would endanger the continuation of their profitable operations. To prevent such pur-

⁴³ Office of Foreign Agricultural Relations, Foreign Agriculture, May 1940, p. 329.

⁴⁴ Heinz Pol, *Suicide of a Democracy*, Reynal & Hitchcock, 1940, pp. 70-76. See also *The Nation*, July 6, 1940, pp. 7, 8.

chases representatives of the aircraft industry did not hesitate to present an entirely false picture of the capacity and quality of the French aircraft industry.

If France's experience teaches anything, it is that defeat came not through too much, but rather through too little democratic control over the industrial system.

On July 10, 1940, the Chamber and Senate of the French Parliament voted the Third Republic and the constitution of 1875 out of existence.⁴⁵ France is apparently in the process of becoming a corporative state.

On July 31, 1940, the first step was taken toward a reorganization of all food industries along the same lines. A decree published on July 31 in the *Journal Officiel* provided for reorganization of the dairy industry on a vertical pattern enabling the Government to control prices, production, and distribution, and prevent profiteering. The dairy industry decree applied to milk, butter, and cheese production, with emphasis on the coordination of production and distribution.⁴⁶

GOVERNMENT MONOPOLIES

State monopolies in France have been continued, despite sporadic agitation for their abolition. It has been contended by critics that the Government would obtain more revenue from taxes on tobacco and matches than from the monopolies, and that the people would get cheaper and much better products. The quality of the tobacco products put out by the French monopoly has been very harshly criticized. In 1922 the Senate favored dropping the tobacco monopoly, but pressure from planters and monopoly employees prevented any action. In 1925 the sale of the tobacco monopoly to private interests was considered, but the idea was dropped.

The match monopoly was actually abolished for a few months in 1924. The Chamber of Deputies passed a bill abolishing it at the beginning of the year. The Senate Finance Committee opposed the measure, but it was forced to a vote and passed on March 17. On July 30 the Chamber reversed its stand and voted to reestablish the monopoly. This also appears to have gone through the Senate, as the monopoly was active at the end of the year. In February 1927 the Minister of Finance was working on a proposal to farm out the match monopoly, but the idea appears to have been dropped. The match monopoly was started in 1872, as a result of widespread evasion of the tax on matches.

The tobacco monopoly is even older, going back to 1730. It was abolished in 1792 but reestablished by Napoleon I in 1810, and has been one of the state's chief sources of revenue ever since. The Régie (monopoly) is bound by law to purchase all the tobacco produced in France, but this is not an unlimited obligation, as planters must obtain annual permission from the Régie, specifying the area authorized, the number of plants per acre, the date for delivery of the leaf to Régie warehouses, etc. Cultivation is limited to certain departments. No one is allowed to cultivate, import, or manufacture tobacco without permission. The price paid for leaf is fixed by a committee of 13, made up of 6 Régie representatives, 6 planters' representatives, and a chairman chosen by the Minister of Finance. Tobacco products are sold through licensed retail agents, at prices

⁴⁵ Washington Post, July 12, 1940.

⁴⁶ The Journal of Commerce, New York, August 1, 1940.

fixed by the Régie, the agent getting a commission of 6 to 9 percent on his sales.

The National Alcohol Office was established in 1922, to take over the monopoly for the sale of beet sugar alcohol set up during the war. Originally intended to assure the Government a supply of alcohol during the war, the monopoly was continued after the war to avoid disruption of the market. In 1922 the producers signed an agreement for its continuance, provided the State would agree to purchase beet sugar alcohol on the basis of sugar quotations. In 1937 it was reorganized as the Régie Commercial and placed under the authority of the Ministry of Finance. It does not produce any alcohol, but purchases all industrial alcohol (beet and grain) manufactured in France and has a monopoly of its sale. Production quotas are established in case of overproduction. A law of December 1934 provides that in case of overproduction, the vintners must distill and sell for alcohol to the Régie, wine under 5½ percent. Industrial alcohol is sold by the Régie mainly to gasoline importers and distributors, and to chemists, perfumers, etc. Gasoline distributors must purchase alcohol equal to 10 percent of the amount of gasoline declared for consumption.

A coffee monopoly was proposed in 1916 and again in 1918, but was not adopted. A bill for a fertilizer monopoly was introduced in 1927 but was not passed.

Potash is not precisely a Government monopoly, but a law on February 1937 reserves all unalienated potash deposits to the State. It further provides that all potash mines shall belong to one sales comptoir, which will have a monopoly of sales, at prices controlled by the Government. The comptoir also has a monopoly of exports and imports.

Allied to the match monopoly is a law passed in October 1933, imposing a heavy tax on ferro-cerium, requiring a license for its manufacture and permitting its sale only through licensed tobacco dealers, at prices fixed by the Government. This is to check competition of lighters with matches.

In 1934 the Government considered several proposals for a petroleum monopoly, covering importation and refining. One proposal was for a Government monopoly. Another was for two national companies, for importing and refining, in which all importers and refiners would be obliged to participate and in which the Government would participate to the extent of 33⅓ percent of the control, without putting up any capital. It was decided that none of the proposals were satisfactory. Licenses are required, however, for the importation of petroleum and its products.

A decree dated July 10, 1936, provides for a tax on imported petroleum, the receipts from which will be used to further the production of synthetic petroleum. Another decree issued in December 1936 provides that all importers of gasoline must belong to the Synthetic Gasoline Comptoir, and must take the production of the two synthetic gasoline plants at cost, which is higher than the sales price of natural gasoline.

GOVERNMENT ORGANIZATIONS

The National Economic Council was established in 1925, to study and make recommendations to the Council of Ministers regarding improvements in business organization. In 1933, proposals were

made to increase its scope, and a committee was appointed to study the question. At that time it was stated, "Today, one takes pains to facilitate the development of groups which formerly were forbidden. The N. E. C. should act as a medium through which producers could come together voluntarily." Labor organizations favored increasing the powers of the N. E. C., saying, "Economic problems can no longer be regulated by chance or the play of individual or group interests, and it is the N. E. C. which must reconcile conflicting interests in the common good." Some groups even wanted to develop the N. E. C. into a sort of corporative state. The Confederation of French Employers, on the other hand, preferring an enlightened capitalism, was opposed to State intervention.

A bill drafted by the committee was finally adopted, with some changes, on April 29, 1936. It charged the N. E. C. with the study of problems affecting the national economy, formulation of opinions on proposed legislation, following up their application, studying the effects of laws actually passed, proposing measures for regulation and organization of production and trade and, on the request of interested parties, for arbitration of economic disputes. The N. E. C. was divided into 20 occupational sections, representing various industries, trades, transportation, public services, banking, agriculture, and the professions. Industrial sections were made up of representatives of management and labor.

The original bill contained an article dealing with agreements for the regulation of production, trade, and prices, and authorizing the General Assembly of the N. E. C. to make all or part of such agreements obligatory. It also provided that cartel agreements, designed to replace free competition by collective organization for regulating production, distribution, or prices, should be invalid unless filed with the N. E. C., fixing a schedule of fines for violation. This article was eliminated before the bill was finally passed, apparently at the instance of the conservative elements, including the Confederation of French Employers.

The National Center for Scientific Organization of Work was established by a decree of November 25, 1936, to study means of reducing production costs, improving operations, and increasing output; to study the creation and functioning of new organizations required as a result of economic evolution and professional organization; to coordinate activities of bodies engaged in the promotion of scientific organization of work; to undertake technical investigations of questions of organization, at the request of ministries. The Minister of National Economy is chairman of the committee.

The National Center for the Scientific Organization of Labor to Reduce Production Costs was established in November 1936 by the Minister of National Economy, to bring about a more favorable relationship between wages and prices and a rationalization of production and distribution; to study technical organization of work to prevent waste of time; and to coordinate the activities of public and private groups.

The Service for Control of Production was established in April 1938, charged with studies relative to the organization and control of production.

PART IV

**GOVERNMENT CONTROL OVER ECONOMIC ACTIVITIES
IN ARGENTINA**

by

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GOVERNMENT CONTROL OVER ECONOMIC ACTIVITIES IN ARGENTINA

THE NATURE OF ARGENTINE ECONOMY

Government intervention in the economic life of Argentina has been less prominent than in most other Latin American countries, in which control over "key" industries has long been an established practice.¹ During the last decade, however, the Argentine Government has taken various steps to extend relief to agriculture, moving the country in the direction of greater official participation in economic activity.

The national economy of Argentina is based almost entirely upon its vast agricultural and livestock resources. As the requirements of the population are relatively small in proportion to production, the bulk of the output finds its way to foreign markets, and therefore Argentina's prosperity is determined by the size of her livestock and crops and her ability to dispose of the products at satisfactory prices.

The rapid expansion of Argentine foreign trade during the last quarter of the nineteenth century raised the country to the premier position among the South American nations by the first years of the present century. This rise in foreign commerce coincided with the expansion of its grain exports. By 1904 grain exports surpassed in value the exports of pastoral products which had previously constituted the bulk of the country's overseas shipments.

From the point of view of the position of the grazing industry in Argentine foreign commerce the year 1900 is significant as the year when artificial refrigeration began to be applied in some volume to ocean shipments of beef, thus opening up the European market for Argentine beef; from this time on the quantity and quality of livestock were influenced by European market requirements.

In recent years agriculture and livestock products together have comprised about 95 percent of Argentine total exports. Normally approximately 75 percent of Argentine total exports go to European countries, 23 percent to other American countries, and somewhat less than 2 percent to Asiatic countries. Great Britain has long been Argentina's leading export market. Since 1930 the United Kingdom has taken on the average roughly 35 percent of Argentina's total exports. Practically all of its chilled beef, all but a small fraction of its frozen mutton, and about half of its preserved meats go to Great Britain, along with about one-quarter of its exports of agrarian products, chiefly corn. In recent years Great Britain has purchased the bulk of the bran shipments and a substantial part of the raw cotton. In 1935, 1936, and 1937 the United States was the second principal export market for Argentina, taking about 12 percent of the total value of exports. In 1938 there was a sharp drop in shipments

¹ Bureau of Foreign and Domestic Commerce, *World Economic Review*, 1933, p. 220.

to the United States, as abundant American harvests reduced the need for imported grain, meats, and fats.²

The decline in world prices and the reduced demand resulting from the world depression caused a great deal of hardship to the Argentine farmer and livestock producer. In order to aid the producers of the chief agricultural export crops, the Argentine Government has adopted definite measures since the early 1930's.

GOVERNMENT POLICY TOWARD BUSINESS

ANTITRUST LAW

The Argentine Republic was the first South American country to pass a law against trusts (No. 11210, August 23, 1923).³ In Argentina, under this law, it is a criminal offense for any person to make an agreement, pact, combination, amalgamation, or fusion of capital which tends to establish or sustain a monopoly for the sake of profit in one or more branches of production, in terrestrial, fluvial or maritime traffic, or in domestic or foreign trade, in one place or in several, or throughout the national territory.

According to Argentine law, acts of monopoly or tending to monopoly are considered to be those which, without representing technical or economic progress, arbitrarily increase the personal profit of persons practicing them out of proportion to the capital actually involved, and those acts which make it difficult for other persons, natural or corporate, to compete freely in production and in domestic or foreign trade.

The law severely punishes the intentional destruction of produce, in whatever form or stage of preparation, whether by producers, contractors, or merchants, with the object of causing price inflation, provided such destruction is not authorized by the Government.

Other acts of monopoly, punishable by law, include the abandonment of crops and plantations; suspension of work in factories, powerhouses, quarries, mines, or any other producing establishment, if such suspension is brought about by the payment of indemnities to the proprietors.

In the same way, the law restricts agreements to allocate territory—whether a region, province, or locality—as exclusive markets for sale or purchase for certain products for the benefit of persons or societies, with the object of suppressing competition, or raising, lowering, or fixing prices.

Cornering, withdrawal from consumption, or agreeing not to sell, with the object of raising the prices of articles of prime necessity, are especially considered to be acts of monopoly.

In addition, the deliberate and maintained sale of goods or services below cost, except for deteriorated articles or those being sold out, is also punishable, if the object of such action is to impede free competition.

Other acts specified and punishable by law are the following: Agreements that require the purchaser not to buy from another seller; those which impose upon retailers a fixed resale price; interlocking directorates or managerships, which might lead to a monopoly

² U. S. Department of Commerce, Commerce Reports, March 4, 1939, p. 212.

³ J. W. Reichert, International Survey of Cartel Legislation, Paris Congress, 1935, Doc. No. 51, p. 6.

or the restriction of competition; and finally, every guaranty, direct or indirect, made by industrialists or superintendents to merchants, for goods supplied to persons in their employ.

Violators of these legal provisions and bankers who take part in the violations, are punished with fines of 2,000 to 100,000 pesos, or imprisonment of from 1 to 3 years. Second offenders are liable to both punishments.⁴

On September 27, 1923, the Ministry of Agriculture issued a decree for the enforcement of this antitrust law. In accordance with the provisions of article 2, subdivision (d), of the law, articles declared to be of prime necessity are listed, including practically the entire range of edibles, meat, vegetables, dried fruit, etc.; clothing and clothing materials; and articles for house and household use, and also for construction, lighting, and heating.

Background of the Antitrust Law.

The antitrust law was preceded by a great deal of agitation for Government control of the meat industry. Grave charges of manipulation were leveled against the meat-packing establishments of Argentina, looking to the suppression of competition and monopolization of the meat market.

The following quotation from the "Buenos Aires Herald" of November 28, 1922, discusses (from a consular report) "The Meat Combine":

An official "Red Book" issued by the Ministry of Agriculture today * * * traces the history of the meat industry from the time of the establishment of the American interests in this country some 10 years ago. It is stated that the increased competition which followed the entry of the American frigorificos [plants for chilling or freezing meat] in the market at the end of 1911 brought about a combination or convention between the seven companies then in existence for dealing with the shipment of meat to the United Kingdom. The convention laid it down that representatives of the companies were to meet periodically to determine the weekly quantity to be shipped by each concern. In 1914, it is stated, the American companies left the combination, because one of them proposed to increase its shipments by 70 percent without offering compensation to the others. Unrestricted competition was renewed, with the result that prices of livestock at once advanced 50 percent. In 1914 a "pool" was constituted in London, which it is stated still rules the prices of livestock and of meat. Under this agreement each frigorifico undertook to purchase a certain quantity of livestock in each of the principal markets, the percentage allotted being equivalent to its customary purchases. This percentage in the local markets, combined with certain concession for purchases in the country, gave each frigorifico a certain percentage of the country's livestock in general.

It is added that if any of the companies endeavored to "corner" the market or to buy more than its proportion the others were permitted to advance their buying prices if stock were scarce. Complete details of purchases and shipments were up daily, and these figures served to show whether any company had bought more than its proper proportion. The effect of the combination is stated to have been that there was no competition in buying. Each frigorifico knew the requirements of the others, and all in accord fixed the prices of livestock. In this way, it is declared, it is assured that no frigorifico will inundate the market at any given moment to the disadvantage of the others.

The "Red Book" quotes conclusions reached by the Federal Trade Commission of the United States, to the effect that Swift & Co., Armour & Co., Wilson & Co., and the Cudahy Packing Co., by means of branches and combines with other companies in South America, restrict and monopolize South American shipments of meat for the United States and other countries; that the four companies named work in collusion for the sale of fresh meat, their collusive activities comprising interchange of information respecting the "margin" realized in the

⁴ British Board of Trade Journal, London, November 15, 1923, p. 530.

sale of meat, inspection of each other's stocks, and common action to sell at prices lower than their competitors by means of a system of rotation, each member of the combine assuming in turn the obligation to reduce prices to the clients of competitors; that the members contribute to a secret fund for the purpose of influencing public opinion and Government action; that convention, agreements and combination mentioned are guaranteed by a community of interests between the four companies cited, by means of property held in common in various enterprises. In this way two or more of the five frigorificos are joint owners or have holdings in 108 businesses, as was proved up to the month of July, 1918.

PROMOTION OF MEAT INDUSTRY

The objective of Government intervention in the meat industry, the products of which are of tremendous importance to Argentina, has been to obtain a larger share of the British market for meat products; to develop markets in other countries; to promote the domestic sale of high-grade products at the lowest possible price, at consumption centers distant from packing establishments; and to insure favorable returns to the cattle raisers. A number of measures have been adopted to this end.

The first of these measures was the National Meat Law, which became effective October 7, 1933, and is the basic law for the entire meat program. The principal objectives of the law are: ⁵

(1) The formation of the Junta Nacional de Carnes, or National Meat Board, as an independent body;

(2) Enactment of rules for the organization and functioning of new meat plants or frigorificos, and of trading institutions to be established by the National Meat Board wherever it is necessary for the protection of national stock breeding and for lowering the prices of meats intended for home consumption;

(3) Establishment of the national frigorifico.

The National Meat Board ⁶ is an autonomous body consisting of nine full members and nine proxy members appointed by the Government. Restrictions are placed on board members' affiliations with other interests.

Activities of the board include—

(a) Establishment, with the consent of the Government, of rules for the grading and classifying of livestock and of meat intended for consumption at home and abroad;

(b) Fixing, with Government consent, of standards to which the exports of animal products must conform as to grade, quality, preparation for, and conditions of, transport;

(c) Establishment, with Government consent, of frigorificos or trading organizations as required in the home or foreign markets for the protection of the stock farming industry;

(d) Establishment of a permanent commercial organization, with a view to securing the largest possible consumption of meat and reductions in prices in the home market, retention of existing markets abroad and the establishment of new ones.

The following rules govern the operations of frigorificos and meat trading institutions: ⁷

Whenever it is found necessary for the protection of the livestock wealth of Argentina or to obtain reductions in the prices of meats

⁵ C. Keech Ludewig, *Argentina's Meat Industry and Trade*, Commercial Pan America, Pan American Union, Washington, p. 2.

⁶ *Ibid.*

⁷ *Ibid.*, p. 3.

intended for home consumption, the board may establish the frigorificos and commercial and industrial organizations considered appropriate. These organizations will be designed to carry on the slaughter of stock, preparation of meat and other products, sale, wholesale or retail, of the same, and to engage in the export of meats.

These organizations are stock companies, membership in which as shareholders is open to all sellers of livestock. The intention is to make the producer a dealer in his own products and to bring the producer in touch with the consumer of meat, and to eliminate as far as possible the number of intermediaries that separate one from the other. The reduction of the number of middlemen is accomplished partly by the fact that the new companies shall all be composed of stock farmers who will give their personal services and their capital to the business of the company. The National Meat Board limits itself to the initiation and promotion of these organizations of stock farmers without any direct intervention in their activities and administration. Thus, it is the members who will secure the profits or sustain the losses. The companies will be private organizations in which the state and the board will merely exercise control in the interest of the public.

The frigorificos were opposed to the creation of the National Meat Board. They maintained that it was unconstitutional to force cattle raisers to become partners in the enterprise.⁸

The law provides for the establishment of a national meat packing plant, or Frigorifico Nacional, in the Federal Capital, to be a mixed company, formed by the municipality of the capital and the National Meat Board, which will represent the stock farmers. In short, the Frigorifico Nacional is intended to fulfill all functions relating to the preparation of meat for the market, and its sale in Argentina or abroad, on its own account or for that of third parties.

The law established a tax on all cattle sales, to be paid by the seller, the amount of which is fixed periodically by the National Meat Board. Part of the proceeds are earmarked to cover the expenses of the board itself, and the remainder is to be paid to organizations created for the benefit of the cattle industry, such as the *Corporacion de Productores de Carnes*.

The meat packers disapproved of the establishment of a national meat packing plant, claiming that it would involve a bureaucratic set-up into which politics was certain to creep. They also pointed out that there was already excess capacity, owing to Britain's plan of restricting imports.⁹

An important clause in the Roca-Runciman agreement provided that if the Argentine Government or Argentine producers should undertake to own or operate a meat enterprise, not primarily for profit, but for the better regulation of the trade to assure reasonable returns to the producers, the British Government would be prepared to allow such exporters a proportion up to 15 percent of the chilled beef taken from Argentina, on condition that the meat be shipped through normal channels.¹⁰ The Argentine Government refused to allow the share to be dissipated among a number of small inefficient operators that

⁸ Simon G. Hanson, *Argentine Meat and the British Market*, Stanford University Press, 1937, p. 266.

⁹ Hanson, *op. cit.*, p. 266. The Ottawa agreements limited chilled-beef imports to the quantities taken in the year ending June 30, 1932; frozen-meat imports were scaled down progressively to 65 percent. Argentina was determined to prevent a decrease of exports to her only important market, and in May 1933 the Roca-Runciman commercial treaty was signed. Britain agreed to impose no further restrictions on the import of Argentine chilled beef as long as quarterly arrivals did not exceed those for the corresponding quarters of the year ending June 30, 1932.

¹⁰ *Ibid.*, p. 267.

could not compete effectively with the privately owned packers, and encouraged the establishment of the Argentine Meat Producers' Corporation, thereby creating an effective competitor of the privately owned packers.

In October 1934 a law was enacted providing for the "Corporacion Argentina de Productores de Carnes," or Argentine Meat Producers' Corporation. The principal objective of the organization was to promote manufacture and trade in cattle products and byproducts in domestic and foreign markets, and assure reasonable returns to cattle raisers.

The corporation was established in Buenos Aires for a term of 50 years, pursuant to the provisions of the National Meat Law of 1933.¹¹ Under Article V of the law creating the corporation, it is allowed to slaughter and prepare meat for consumption on its own account or for third parties, to sell at wholesale or retail, and to export cattle, cattle products, and byproducts on its own account or for third parties. The scope of activities of the corporation as outlined in the law permits it to establish plants, set up offices at home and abroad, and to contract loans to carry on its business.

The regulations establishing the corporation closely follow those outlined in the National Meat Law of 1933. All cattle, sheep, and hog raisers are eligible to become shareholders in the corporation, and under no condition may their interests be transferred to nonraisers of such products.

There exist certain differences between the National Meat Board and the Argentine Meat Producers' Corporation. The former is a state enterprise, with membership largely drawn from the livestock interests; the latter is a commercial organization in which the stockmen are shareholders. "The Junta supervises compliance with laws regulating the meat trade and industry; the corporation intervenes directly in the market to aid the stockmen by influencing prices. The Junta establishes procedure for selling, classification, and transport of livestock and meat, while the corporation actually purchases and slaughters cattle and processes the meat."¹²

On May 31, 1937, a third step looking toward a general improvement and expansion of the meat industry was undertaken, with the approval of the regulations and statutes for the establishment of "Mercados de Haciendas y Carnes," or meat-marketing agencies.¹³ They are established in accordance with the provisions of the Meat Law of 1933 for a period of 50 years. The general purposes of the organization are to construct, acquire, and establish cattle and meat marketing agencies, frigorificos, and meat depositories throughout the country, for which purposes loans may be contracted from governmental financial institutions or through local or foreign private banks. The services of the organization are subject to various rates and rulings approved by the Meat Board, and no preferences are granted which are not allowed to all interested parties.

Membership and structure of the administrative organization follow closely those of the Meat Board and the Meat Corporation, and capital is limited to 30,000,000 pesos. The first working year of the Mercad ended September 30, 1938, and subsequent fiscal years begin on October 1.

¹¹ Commercial Pan America, *op. cit.*, p. 4.

¹² Hanson, *op. cit.*, p. 270.

¹³ Commercial Pan America, *op. cit.*, p. 9.

An Argentine decree, No. 96453, dated December 19, 1936, provides for an export premium to exporters of beef to the United Kingdom to be paid out of profits derived from exchange control. The Argentine National Meat Board is to be paid from exchange profits. The National Meat Board, in turn, prorates these funds among the meat exporting companies in proportion to their shipments of the various kinds of beef to the United Kingdom. This measure was taken to counteract the British policy of subsidizing domestic cattle producers.¹⁴ Since 1934, the United Kingdom has been paying a subsidy to domestic beef-cattle producers. Although beef was on the free list, the subsidy was a charge on the general revenues. The desire to make the beef-cattle subsidy at least partially self-supporting dominated the plan to levy duties on imported non-Empire beef.¹⁵ Prior to the expiration in November 1936 of the 1933 trade agreement with Argentina, no beef duties were possible. The new Anglo-Argentine agreement, dated December 16, 1936, provides for British duties on chilled and frozen beef and also for import quotas. To offset the import duty established on beef by the United Kingdom under the 1936 trade agreement, the Argentine system of beef subsidy was adopted.

In its efforts toward stabilization of the meat industry, the Argentine Government is determined not to allow one of her most important exports to be centered in a single foreign market. The establishment of the Corporation of Meat Producers, the Meat Board, and the Meat Marketing Agency is an indication that the tendency is definitely toward increased State control over the operations of private packers and participation in the preparation of meat for export.¹⁶

AID TO AGRICULTURE

The cultivation of cereals had been the chief source of wealth in Argentina for more than 50 years, and still provides a high percentage of her exports. The Argentine Government in recent years has been increasingly active in efforts to alleviate the plight of the farmer.

The guaranty of minimum prices has been one form of Government assistance and was applied, among the major crops, to wheat, corn, and flaxseed, in an effort to make the prices received by their producers cover the cost of production.

To administer the minimum-price plan, the Grain Regulating Board was created in November 1933, and reorganized in November 1938. The main function of the board was the purchase of wheat, flaxseed, and corn whenever the market prices fell below the guaranteed minimums established by the Government. The subsidy and the expenses of operating the board are covered by profits made by the Government in its foreign exchange operations. If necessary, the Bank of the Nation was authorized to advance additional funds.¹⁷

¹⁴ Paul O. Nyhus, *Argentine Beef Subsidy—Partial Compensation for British Tariff*, Foreign Agriculture, Bureau of Agricultural Economics, November 1936, p. 149.

¹⁵ Bureau of Foreign and Domestic Commerce, *Commerce Reports*, March 13, 1937, p. 219.

¹⁶ "Subsidizing exports, spreading propaganda for the use of Argentine meat, making commercial treaties to facilitate the export of national products, all were methods of aiding the producers distinctly different from that calling for the State's entry into the packing of meat." (Hanson, *op. cit.*, p. 268.) Up to 1934 no investigation of the packing industry was undertaken, but in that year investigations were made by the Senate, the Meat Board, and the Meat Producers' Corporation, and plans were made to carry out a joint Anglo-Argentine inquiry. Owing to the reluctance of the packers to cooperate with the investigation, however, no comprehensive study of industry has yet been published.

¹⁷ Bureau of Agricultural Economics, *Foreign Agriculture*, February 1939, p. 62.

A decree passed on December 8, 1938, extended the minimum price guaranty program to include cattle under administration of the National Meat Board.

An Argentine decree of September 6, 1939, abolished the basic minimum prices for wheat and linseed guaranteed by the Government in its decree of November 14, 1938. The explanation given was that linseed has consistently sold in the world market at more than the guaranteed minimum price. With regard to wheat, the Government pointed out that advancing wheat quotations in the Grain Exchange, following the declaration of war, did not reflect the real value of grain but were merely a consequence of speculation.

The situation prevailing in the corn market following the German occupation of Norway, Denmark, Belgium, and Holland, an important market for Argentine corn, prompted the Government to examine other possibilities for utilizing this grain and to establish price guaranties. A decree passed by the Argentine Congress on August 14, 1940, authorized the executive power to purchase the 1940 corn crop at a price fixed by the Government. The decree also authorizes the Government to dispose of the corn in any manner. Funds for these operations are to be taken from exchange profits, and if these prove to be insufficient, funds may be borrowed from the Bank of the Nation.¹⁵

Government control of agriculture has not been limited to price control measures, but has been supplemented by limitation of production, improvement of quality, etc., under the authority of a number of boards.

The National Cotton Board (April 27, 1935) devotes itself to fostering cotton cultivation on approved lines by direct intervention in all phases of production, processing, and marketing, and is devoting particular attention to the improvement of seed, the extermination of insect pests, and the promotion of colonization in cotton-growing districts.

The too rapid expansion of the yerba maté industry (yerba maté is a vegetable decoction resembling tea) and competition from other countries has in recent years led to overproduction. In order to aid the producer, legislative action was taken in 1935 and the Yerba Maté Commission, created to enforce the law, virtually terminated the extension of cultivation by imposing a tax of 4 pesos on every new plant.¹⁶ The industry is subsidized by means of a tax of 6 cents per kilo on domestic sales of milled yerba, and growers are guaranteed a minimum price. The Regulating Board entrusted with enforcing the law has created an official selling organization, the "Mercado Consignatorio de Yerba Maté Nacional Canchada."¹⁷

The Wine Regulating Board was created in 1934 to deal with the problem of excess production and price depression. The measures applied by the board include the purchase of grapes, the purchase of wine for maturing purposes, the granting of loans to producers, and the buying up of vine-producing land and its diversion to other uses. The Wine Board is authorized to borrow up to a specified amount from the exchange profits fund. A surtax of 1 centavo per liter (1.25 cents per gallon) was imposed for a period of 6 years. To

¹⁵ Office of Foreign Agricultural Relations, Foreign Crops and Markets, September 3, 1940, p. 265.

¹⁶ Report on Economic and Commercial Conditions in the Argentine Republic, Department of Overseas Trade, London, June 1939, p. 106.

¹⁷ *Ibid.*, p. 107.

discourage the establishment of new vineyards a tax must be paid on new plantings.

A quebracho control committee has been operating since 1935, with the purpose of limiting production and exports. It is a voluntary association, made up of practically all the producers. The task of the Government in aiding this committee is to discourage the exportation of logs. Only first quality, expensive logs may be exported.

The purpose of the Grain and Elevators Commission (Oct. 5, 1935) is to control elevators, fix standards of grain for each of the different zones of production, and control shipments and all other transactions of grain trade. The Government has undertaken to build a chain of elevators which should enable the farmer to store crops and obtain credit against it by means of warrants.

To assist producers and exporters of casein, a Government decree (August 5, 1939) established a National Committee for the Dairy Industry. It provided that exporters of casein could obtain a form of subsidy, subject to certain qualifications, by selling their export bills at the higher "free" instead of "official" exchange rate. This plan has not yet become effective.

Other analogous bodies are the National Oil Committee, the National Committee of Food Products, and the National Committee of Quebracho Extract, aimed at organizing production in accordance with the agricultural characteristics of each zone of the country.

The Argentine Government submitted projects for the regulation of the fruit, cotton, and sugar industries. In connection with the sugar industry it is planned to restrict sugar production, allot quotas, and establish wide powers of control over the various branches of industry, including cane planting, milling, and marketing of the finished product.

Three decrees were issued by the President in 1938 to regulate the flour milling industry. These measures are the result of a rise in bread prices and a determination to improve the technique of the flour industry, to safeguard the future of the industry, and to protect the interest of consumers. A request by the Chamber of Millers for Government regulation of flour production by means of quotas, however, was declined by the Government.

The first decree fixes official standards for the different grades of flour produced in Argentina. The second authorizes the Argentine Ministry of Agriculture to regulate and control the activities of the Chambers of Millers; i. e., the transactions in flour and mill byproducts in Argentina are conducted through the Chambers of Millers in Buenos Aires and Rosario. The decree points out that the influence of the Chambers on prices and on development of the flour industry makes it advisable that their operation be subject to official control. The third decree establishes an Advisory Board composed of representatives of the millers, pastry makers, and bakers, whose chief duty will be to settle controversies arising between flour millers and related industries. The Board is to collaborate with the Ministry in drafting legislation in the interests of both the consuming public and the industries concerned.²¹

The mortgage moratorium law effective in October 1933 was designed to alleviate the financial burden of the landholders. At first

²¹ Bureau of Agricultural Economics, *Foreign Agriculture*, April 1938, pp. 207, 208.

challenged on constitutional grounds but subsequently upheld by the Argentine Supreme Court, this law declared a moratorium of 3 years on all amortization and interest payments under certain conditions, and provided for a maximum interest rate of 6 percent. Other legislation provided for a reduction from 6 to 5 percent in the interest rate on bonds of the National Mortgage Bank, and the subsequent refinancing, at a lower rate of interest, of all farm mortgages held by the National Mortgage Bank, more than one-third of the total outstanding farm mortgages of the country.²²

FOREIGN EXCHANGE CONTROL

Practically all the measures inaugurated by the Government to help agriculture through the establishment of control boards are based on the operation of the foreign exchange control system, since the spread between the official buying rate for export bills and the selling rate assures a profit to the Government.

Origin of Foreign Exchange Control in Latin America.

State intervention in the exchange market through foreign exchange control has become a powerful instrument for controlling national policies, and particularly foreign trade. The primary reason for the introduction of exchange control was an inadequate supply of exchange due to the fall in payments for exports, and the disinclination to ship the available supply of gold out of the country. In effect, however, the control of foreign exchange transactions has come to amount to actually shaping the volume, composition, and direction of trade relations between various countries. Rate changes tend to stimulate or to control the volume of merchandise movements and act as import embargoes or as a protective tariff.²³ Restrictions placed on imports in many countries had the effect of stimulating local production of certain articles.

Exchange control in its present form was first adopted after the financial crisis of 1931. It was initiated by certain countries in Europe, but the Latin American countries were soon forced to follow suit. The control measures taken by the Latin American states were dictated by the drastic fall of raw material prices which severely upset their economy, the prosperity of which depends upon the export of one or two commodities. The drop in raw material prices, coupled with the efforts of European countries to attain agrarian self-sufficiency, caused a shortage of foreign exchange. With falling prices and vanishing export markets, the burden of foreign debt was tremendously increased, and was followed by default and currency depreciation, import quotas and exchange control. Exchange control in Latin America only reflects the dangerous dependence of these countries upon foreign trade, and the narrow basis upon which foreign trade operates.

The systems of exchange control adopted by the Latin American countries are varied and subject to sudden changes. The regular practice in the countries adopting these measures consists in requiring all importers to deliver all, or a certain percentage of, the foreign exchange proceeds from their commodity exports to the exchange

²² Bureau of Agricultural Economics, *Foreign Crops and Markets*, June 1, 1935, pp. 676, 677.

²³ Herbert M. Bratter, *Foreign Exchange Control in Latin America*, *Foreign Policy Reports*, Feb. 15, 1939, p. 274.

control authorities at arbitrary rates. Portions of this foreign exchange are allotted to importers of essential commodities. The remaining portion of foreign exchange may be sold by exporters outside the official market and, in most instances, importers of nonessential goods are entitled to buy such foreign exchange.

Exchange control in Argentina.

Argentine exchange control was first adopted in October 1931, and was frequently altered since. Owing to the complexity of the Argentine foreign exchange system, the following account will be confined to those features of the control measures which indicate the extent to which they have become an integral part of Argentine economic policy.

The rigid type of exchange control first introduced was changed in November 1933 when the "prior permit" system was adopted whereunder importers before placing their order had to apply for a permit to obtain exchange at the official rate. In lack of a permit, importers could obtain exchange only in the "free market" which, according to the law, had to be at least 10 percent higher than the "official rate." On November 7, 1938, a decree was issued, extending the system of prior-exchange permits to imports liquidated in the "free" market. The effects of this decree were felt most severely by importers of American lines for which permits were withheld, whereas no restriction was placed upon similar products from countries with which Argentina had special trade agreements or with which it enjoyed an export balance.²⁴

The official rate was determined by the Government, while the free rate fluctuated with supply and demand. The official rate has played a decisive part in determining the level of commodity prices and the cost of living. The 10 percent differential between the "official" and "free" rates had been effected by means of a tax imposed whenever the difference between the two rates is less than 10 percent. Since August 22, 1939, the "official" and "free" rates were substituted by "A" and "B" rates; the spread between these two is usually less than that which prevailed between the "official" and "free" rates. Under the present system, holders of prior-exchange permits may buy official exchange, either at the preferential rates of 15 pesos to the pound sterling, or the rate of 17 pesos to the pound.²⁵ All imports are subject to prior exchange permits.

Foreign exchange derived from the shipment of Argentina's main export commodities must be delivered at fixed rates to the authorities, who sell it to Argentine importers and others at rates determined by the Central Bank, subject to preferred claims in connection with the Government's debt. Through its resulting monopoly of three-quarters of the foreign exchange produced by the country, the Government maintains a strong influence over the volume as well as the nature of imports.

The system of exchange control adopted enables the Government to direct trade along bilateral lines, by favoring imports from those countries which buy most from Argentina.²⁶ The amount of "prior

²⁴ Bureau of Foreign and Domestic Commerce, *Economic Review of Foreign Countries*, 1938, p. 139.

²⁵ *The Foreign Trade of Latin America*, pt. II, sec. 1. Argentina, U. S. Tariff Commission, 1940, p. 16.

²⁶ According to the annual report of the Central Bank of the Argentine Republic for 1937, published in the Federal Reserve Bulletin, August 1938, three-fourths of the exchange transactions were controlled by the government in 1937.

exchange permits" to cover merchandise imported from abroad is based on the quantity of exchange provided by that country through its purchases of Argentine products, after deduction of a reasonable sum for service of the Argentine foreign debt.

Although war emergencies have made it necessary to modify the previous strict adherence to this principle, the policy of issuing prior exchange permits continues to be the basis of allocation of exchange for foreign merchandise. In fact, the course of events has accentuated the bilateral aspect of the system.²⁷ Owing to the loss of European markets and the blockage of the proceeds of exports to the United Kingdom, Argentina became concerned over an excess of imports from certain countries still supplying the Argentina market, particularly the United States. So great was this concern that shortly after the middle of September 1940 action by the exchange control authorities was suspended on all applications for exchange permits covering the importation of United States merchandise. At the end of October the Ministry of Finance announced that the suspension would be lifted, pending applications for permits in accord with normal trade developments would be approved, and consideration would be given thereafter to requests for new permits.

Under the Argentine system a special exchange profits fund has been set up to cover potential losses on grain purchases. It also contributes to financing the activities of some of the other control boards. The exchange profits fund has derived large profits from the purchase and sale of foreign exchange at the official rates. Since, in addition, foreign exchange operations have been carried on in the free market, this produced a net profit which was absorbed directly into Government revenues, a development highly desirable from the point of view of the Government, since it obviates some of the necessity for increased taxes. Thus it is possible that foreign exchange control will come to be looked upon as a source of revenue for the Government rather than as a means of maintaining monetary stability.

REGULATION OF PUBLIC UTILITIES

In the field of public utilities there has been a tendency for private companies to pass into the hands of municipal governments. A step toward the official control of public services is indicated by the passage of an ordinance on October 26, 1938, by the Buenos Aires Municipal Council, providing for the supply of gas in the city on the expiration of the franchise held by a private company at the end of 1939 by the municipality. A mixed association will be formed in which the State Oilfields Department would participate. The power of expropriation is also available in the case of public services.

There have been instances in Argentina where municipalities have taken over the distribution of electric power on the expiration of the franchise held by a private power company without adequate provision for reimbursement to the company or for supplying power to people in the less profitable areas.²⁸ A law approved by the Legislature of the Province of Buenos Aires in March 1939 is expected to prevent the more flagrant abuses of this nature by requiring municipalities or concessionaires to supply power to everyone desiring it,

²⁷ Bureau of Foreign and Domestic Commerce, *Foreign Commerce Weekly*, October 19, 1940, p. 95.

²⁸ Bureau of Foreign and Domestic Commerce, *Comparative Law Series*, March 1939, p. 127.

within the territory of the concession, and if a concessionaire is supplanted by a municipality or a new concessionaire, the latter must pay "actual industrial value" for installations taken over.

The City of Buenos Aires Transportation Co. was formed in 1936, with a monopoly of all forms of transportation in Buenos Aires. Operators of busses, subways, street railways, and all other means of public transportation, excepting taxicabs, transferred their assets to the new company for stock or cash. In February 1939, the City of Buenos Aires Transportation Co. formally took over the property and services of the entities merged in the new authority, the most important of which was the Anglo-Argentine Tramways Co. The expropriation of the omnibus and micro-omnibus lines which did not join the corporations has, however, up to the present been postponed because of lack of funds.²⁹

Transportation rates, excepting those for railroad lines, must be approved by the National Commission for the Coordination of Transportation.

A bill authorizing the President to expropriate the physical assets of foreign owned public service companies operating under concessions granted by the Government was introduced in June 1940. Passage of the measure would affect all telephone companies throughout Argentina, the country's chief railroads, street-car systems, subways, and other transportation facilities, most of which are British owned. There are also American, German, French, Italian public services companies in Argentina. The two principal American utility systems are those of the International Telephone & Telegraph Co., which controls 90 percent of all telephones in Argentina, and the American & Foreign Power Co., Inc. The bill provides that indemnification of properties expropriated will be arranged by the President.³⁰

INSURANCE CONTROL

A decree of June 21, 1938, establishes an Insurance Superintendence, with a supervising committee of five chosen by the Government from a panel submitted by the insurance companies. It has the right to inspect books, vouchers, and correspondence of the companies, check cash position and the general economic condition of each company. It receives all applications for the organization of new companies, and may force companies to liquidate if irregularities are found. A new company must submit copies of its policies, tariffs, mortality tables, etc. (Maximum commissions to life insurance agents are 80 percent of the first year's premium, to be amortized over a 5-year period. Technical reserves are calculated at an interest rate at least one-half of 1 percent under the average for the previous 3 years, with a maximum of 4 percent.)

According to decree No. 67185 of July 19, 1940, new branches or agencies of foreign insurance companies desiring to operate in the country are suspended for 1 year. The decree establishes other rules governing the registration of branches or agencies of foreign insurance companies; it provides that the deposit of National Government bonds, required by internal taxation laws, be considered as the investment of part of the minimum capital required. The investments

²⁹ Report of Economic and Commercial Conditions in the Argentine Republic, Department of Overseas Trade, London, June 1939, p. 9.

³⁰ Journal of Commerce, New York, June 20, 1940.

of foreign insurance companies must be made in accordance with regulations established by the Superintendent of Insurance, and such investments must be permanently maintained in Argentina. No transfers of premiums or of the other accounts can be made to the home office of the company.³¹

ECONOMIC WARTIME MEASURES

An Argentine congressional law of September 7, 1939, authorizes the President to restrict or prohibit the exportation of specified products considered to be prime necessities, as one of the means of conserving domestic supplies and of checking undue price rises.³²

The President is also authorized to suspend the application of the additional 10 percent ad valorem duty on articles of prime necessity, maintained since 1931, and to fix maximum retail prices thereon. Supplies of these articles may also be expropriated by the Government, upon payment to the owner of the cost price plus an indemnification of not more than 10 percent, in the case of raw materials; in the case of expropriation of manufactured products, the prices paid will be the fixed maximum retail price. Maximum prices are also to be set for manufacturers, middlemen, importers, and wholesalers, based upon the prices prevailing during the first 2 weeks of August 1931.

The classes of articles specified in the law as prime necessities are articles of food, clothing, light, fuel, medicine, and construction materials. The various specific products included within these classes are to be established shortly.

An advisory council with far-reaching powers is to be made a permanent part of the Department of Foreign Affairs, according to a decree issued by the Argentine Government on November 6, 1940. The world crisis and the increasing number of political and economic problems faced by the Foreign Office are the reasons given for the creation of the council.³³

REGULATION IN THE PETROLEUM INDUSTRY

Of all South American countries, Argentina offers the most interesting and comprehensive field for the study of Government regulation and direct competition in the petroleum industry.³⁴ Argentina is one of the few countries in the world where the National Government has since the inception of the industry directly operated a substantial part of the petroleum industry. Unlike Chile, Brazil, and Uruguay, Argentina is a producer of petroleum and, therefore, finds the regulation problem more complex. Furthermore, owing to the presence in the country of foreign-owned companies with petroleum wells and distribution and refining facilities, various problems have arisen with respect to the supply of the home markets, and imports and exports of crude and refined petroleum.

The private companies always competed with a Government-owned organization, State Oilfields Department, known as the Y. P. F. (Yacimientos Petroliferos Fiscales). Since early 1936 the position of the private oil companies in relation to the Y. P. F. has undergone

³¹ Bureau of Foreign and Domestic Commerce, *Foreign Commerce Weekly*, October 26, 1940, p. 148.

³² Bureau of Foreign and Domestic Commerce, *Commerce Reports*, October 7, 1939, p. 890.

³³ *Journal of Commerce*, New York, November 7, 1940.

³⁴ The following account is based on D. M. Phelps, *Petroleum Regulation in South America*, *American Economic Review*, March 1939.

many changes. The new regulations are in some respects sufficiently unique to deserve a brief description.

Petroleum deposits were first discovered in Argentina in 1907 by the Federal Bureau of Mines. From that time until 1916, the industry was entirely in the hands of the Federal Government, but in 1916 private companies started production, and by 1924 their share of the total output amounted to 25 percent. As the output of the private companies, which were of foreign origin, has gone upward steadily, the Argentine Government issued on January 10, 1924, the so-called reserve decree, which reserved the most promising territories for exploration for the Government. The action of the Federal Government was followed by the various provinces; since 1924, and even as late as 1936, new reserve decrees, both national and provincial, have appeared at intervals clarifying earlier decrees and reserving additional areas to the Government.

The reserve decree, however, did not bring about the exclusion of the foreign oil companies. They had been active long enough to secure title to at least part of the holdings upon which work had been started. Also, the provincial governments were less strict than the Federal Government. When reservations were made by the National Government in the territories, they were made for the Government entity, the Y. P. F. But when the provinces made reservations, later concession could be granted either to the Y. P. F. or to the private companies. The most important of these was the concession given by the Province of Salta to the Standard Oil Co. Through these concessions the private companies were able to continue operations, and have attained a position approximately equal to that of the Y. P. F. in the Argentine market.

Further regulations of the petroleum industry were started in 1936. A committee of investigation was appointed on May 9, 1936, to obtain information and to suggest decrees or laws which were considered necessary to regulate the importation, transport, and distribution of petroleum products. As a result of the committee's investigation, executive decree number 86,639 was issued in July 1936. The decree provided that the volume of importations to be allowed was to be determined quarterly by the executive power, on the basis of proposals by the Y. P. F.³⁵ Furthermore, the Y. P. F. was to effect these importations and, after deducting the quantity considered necessary for its own needs, was to apportion the balance among the importing companies. The basis for the apportionment was "the producing or consuming capacity, as the case may be, of such private companies as are inscribed on the special register which will be opened for this purpose."³⁶ Thus the private companies were compelled to register if they wished to continue in operation, and then were very largely under the direct control of the competitor, the Y. P. F., acting through the Ministry of Agriculture. The two large companies, Standard Oil Co. and Shell-Mex, refused to comply with the demands of the Government, stating that the agreement would not permit commercial operations. They also declared that in their opinion the enabling decree was unconstitutional.

While prolonged negotiations were being carried on between the Y. P. F. and the two large companies, further complications came from

³⁵ Boletín Oficial, July 24, 1936.

³⁶ Idem.

another direction. On October 6 the municipal council of the city of Buenos Aires passed an ordinance which granted to the Y. P. F. the right for exclusive sale of gasoline after July 1937. This action was a great blow to the private companies, for sales in the federal capital are almost one-third of the national total and, because of the uniform price situation, the most profitable one-third. Later the ordinance was rescinded, after bitter attacks from a number of sources, but only after an agreement was signed by the companies.

Since some marketing arrangement was necessary for Shell-Mex and the Standard Oil Co., a temporary, or "standstill" agreement was finally signed by the companies and the Y. P. F., on December 19, 1936. It was continued until June 28, 1937, when it was replaced by a cartel agreement which was to run for $3\frac{1}{2}$ years and be automatically extended annually after December 31, 1940, the termination date, unless a termination notice was served by one of the parties 6 months in advance of expiration.

Through this agreement, the Argentine market is apportioned among the various companies. Control is largely in the hands of the Y. P. F. Increases in consumption, if there be such, are allotted to the Y. P. F. up to certain specified amounts. Increases above those amounts are to be shared by the other companies producing locally, if local production can take care of the quantities demanded, again up to certain specified amounts. The remainder is allotted to the Y. P. F., if it has supplies, and if not, to the other producing companies, if they have supplies. If importations have to be made to meet the increased demand, then all companies, whether producing locally or not, share in proportion to their respective quotas. These provisions effectively curb the private companies in their competition with the Y. P. F.

While the foreign companies considered the agreement as favoring the Y. P. F., particularly in connection with any increase in consumption above the base figure, it did insure stable conditions for several years; and the projected monopoly of the Y. P. F. was out of the picture.

Other important provisions of the agreement provided for a uniform price of gasoline, the establishment of a special tribunal to administer the agreement, and a system of surcharges to replace the heavy fines for exceeded quotas assessable under the preceding 6-month agreement.

In December 1937 further control measures were introduced. The special committee which was responsible for the 1936 decree brought forward a project of the law for consideration by the Government. In it the national supply of petroleum and all properties connected with the supply are declared to be of public utility and subject to expropriation. If this law were passed, a National Council of Petroleum would be created to have charge of everything relating to the policy of the state in matters concerning petroleum, insofar as a recognition of the rights vested in the provinces would allow.

Existing legislation to which new control measures may be added obviously renders the position of the private companies precarious. The reserve decrees forbid exploration in the most likely areas for discovery. Prices to the consumer are dictated by the Government and are made uniform throughout the country. The quotas for importation and for sale are determined by the Government. The private companies have little independence regarding the distribution methods to be used, and, in addition, control over their actions is

immediately vested in their direct competitor, the YPF, although final authority is in the Ministry of Agriculture.

The Government, by virtue of the reserve decrees, controls those areas which are most likely to yield new supplies. If such supplies are forthcoming through the efforts of the YPF, the power further to limit importations can be invoked, and if national supplies can be made sufficient to cover national demand, those foreign companies which now depend entirely on importations will be out of the picture. The other foreign companies, which depend partly upon Argentine crude and partly upon importations, will find themselves serving a smaller portion of total national demand than formerly, unless they likewise can increase their production of Argentine crude.

The crux of the whole situation is the ability of the YPF to discover new deposits. If the YPF is successful in increasing national output, the foreign oil companies which depend upon imported supplies will, in all probability, gradually be excluded from the market. Standard Oil and Shell-Mex, which depend more upon local supplies, may be allowed to continue operations, but expansion of operations within a growing market will largely be denied by the reserve decrees and the terms of the agreement now in force.

PART V

GOVERNMENT INTERVENTION IN BRAZIL

by

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GOVERNMENT INTERVENTION IN BRAZIL

REGULATION OF BASIC AGRICULTURAL INDUSTRIES

The economic life of Brazil is based primarily on agriculture. While rapid progress has been made along industrial lines in recent years, manufacturing is largely confined to the needs of the domestic market. As a result, agricultural and semiagricultural products make up around 90 percent of the value of the country's total exports. Over the past 50 years, coffee alone has accounted for an average of, roughly, 60 percent of the total value of the Brazilian export trade.

The difficulties that have beset Brazil's major export commodities since 1929 owing to the collapse of commodity prices and the world-wide drive for self-sufficiency, have resulted in a marked trend toward Government intervention in the basic agricultural industries, with agricultural diversification as one of the major objectives. More recently the Government supplemented its aid, extended in the form of a high protective tariff on agricultural and semiagricultural products, by the establishment of so-called "institutes" under Federal or State auspices to aid the financing and marketing of various agricultural products. These organizations usually receive direct or indirect financial assistance from the Federal or State Governments, and in turn may have delegated to them certain executive powers, such as the enforcement of trade practices and standards and the operation of inspection services.¹ The earliest of these were the various coffee institutes.

BRAZIL'S COFFEE DEFENSE MEASURES

Coffee has experienced serious difficulties for a great many years. Total world production over the past decade has averaged about 32 million bags (of 132 pounds each), while total consumption averaged only about 24½ million bags, thus leaving the market with substantial surpluses each year.²

The importance of coffee in the economic life of Brazil explains the high degree of control exercised by the Government in the coffee industry. Since about 1900 Brazil accounted for approximately 72 percent of the world production and for about 60 percent of the total value of the Brazilian export trade. Besides being important as a source of employment of labor and providing an important source of Government revenue, the returns from the coffee exports are also significant in determining the exchange value of Brazilian currency and in financing Brazilian purchases and obligations abroad.³

Brazil's first coffee control scheme was adopted in 1906 by the government of the State of Sao Paulo, assisted by foreign bankers and

¹ Foreign Agriculture, Bureau of Agricultural Economics, February 1938, p. 82.

² Pan American News, Foreign Policy Association, Inc., New York City, September 26, 1940, pp. 8, 9.

³ Edwin P. Keeler, The Brazilian Coffee-Defense Experiment, Foreign Agriculture, Bureau of Agricultural Economics, December 1937, p. 619.

the Federal Government of Brazil. Its aim was to limit overproduction resulting from heavy plantings during the 1890's. It was practically liquidated by the beginning of the World War.

The second valorization scheme was undertaken by the Sao Paulo government in 1917, when another large coffee crop was anticipated following declining consumption that accompanied the World War period. This plan included the purchase and withholding in Brazil an amount of coffee equivalent to that which under pre-war conditions had usually been bought by Germany. After about 3,000,000 bags of coffee were reported to have been purchased, the scheme was brought to an end by a heavy frost which reduced coffee production, and by the end of the war which made it possible for the government to successfully liquidate its stocks.

The post-war slump in commodity prices and a large coffee crop in 1920-21 gave impetus to a third valorization scheme in 1921, which was carried out by the Federal Government. The smaller crops in the immediately following years enabled the Government to dispose of the stocks of coffee purchased by February 1924. In the same year, the State of Sao Paulo was given the task of establishing a permanent coffee defense system, to be administered by a semi-official organization, known as the Coffee Institute. The main features of the plan were: The regulation of the amount of coffee that might move to the port of Santos for export, and the storing of reserve stocks in specially constructed up-country warehouses. In 1926 the scope of the system was enlarged by the established of a State bank authorized to make loans to coffee planters against stocks in the regulatory warehouses, and against mortgages on their plantations.

The purpose of these credit facilities was to insure the necessary credit to growers. Unfortunately, however, this led to an overliberal credit policy which became a significant factor in the overexpansion of the coffee industry. The rapid increase in planting of coffee trees was overlooked, as well as any future possibility of production regularly exceeding anticipated consumption requirements. With the exception of a few years since 1927-28, Brazilian production has considerably exceeded world consumption of Brazilian coffee.

The menace of the large crop harvested in the 1927-28 crop year, of about 10,000,000 bags more than world consumption of Brazilian coffee, prompted the other Brazilian States to join in the defense plan by following an essentially similar type of marketing control. The additional financial support required was obtained from abroad.

Another large crop for 1929-30 aggravated the situation to the extent that coffee prices collapsed as well as the financial structure built up in connection with the defense program. But the government of Sao Paulo succeeded in obtaining a loan amounting to about \$100,000,000 in 1930 in the United States and Europe, secured by warehoused coffee, to be serviced by the proceeds of a special tax of 3 shillings per bag on coffee exports.

In 1931, owing to the continued decline in prices and prospects for a further exceptionally large crop for 1931-32, which would have to be added to the excessive stocks in the interior, the Federal Government took over the coffee control program. An export tax was adopted, amounting first to 10 shillings per bag, and later increased to 15 shillings. The proceeds of the new tax were to provide for the purchase and destruction of the large surplus stocks of coffee. A

prohibitive tax was also placed on new plantings of coffee trees. This export tax system and the "sacrifice" quota plan according to which planters were required to deliver to the Government certain portions of their crops at prices below the market, remained the outstanding features of the coffee defense system from 1931 to December 1937.

Despite the restrictive measures taken, coffee production continued to be excessive. Prices failed to show signs of notable improvement and the quantity exported remained stationary. Despite the destruction of 47,961,000 bags of coffee in Brazil between 1931 and June 1937, the world carry-over as of July 1, 1937, was estimated at 30,461,000 bags, of which 28,069,000 bags was Brazilian coffee and 2,383,000 bags were of other origin.

To remedy the situation, the coffee-producing countries held conferences in Bogota and Habana in 1936 and 1937 in an effort to come to an agreement regarding production control, division of markets, and price maintenance. In view of the fact that these efforts remained unsuccessful, so far as Brazil was concerned, the Brazilian Government decided in November 1937 to introduce radical changes in its coffee policy by reducing its export tax on coffee from 45 to 12 milreis (about 66 cents) per bag, and abolishing the former requirement that 35 percent of the proceeds of export bills be sold to the Bank of Brazil at official rates of exchange. Entries into port, however, were still regulated to give the National Coffee Department an opportunity to dispose of some of its large stocks of coffee. As a result of the relaxation of coffee control at the end of 1937, coffee prices declined in 1938 and 1939, but the quantity exported has risen in the following years. Destruction has continued, and for the 8 years from 1931, when this practice was established, to 1938, inclusive, the total destroyed has amounted to 64,732,914 bags, equivalent to exports for 4 years. Sacrifice quotas were fixed at 30 percent for regular or common coffee and 15 percent for preferential or high grade coffee, and growers were compensated at the rate of 2 milreis (approximately 11 cents) per bag.⁴

Plans regarding the stabilization of the 1939-40 and 1940-41 coffee crops are about the same as regards sacrifice quotas and compensation paid to growers as were adopted in the immediately preceding years. Coffee acquired under these schemes is destroyed. Funds to finance its purchase are derived partly from the tax on coffee exported and partly from a part of the assessment imposed by decree law in November 1937.⁵ The planting of new coffee trees is prohibited until June 30, 1941.

In appraising the success of Government assistance to coffee growers, authorities of the Department of Agriculture state that—

Generally speaking, it would appear that Brazilian coffee-valorization measures operated fairly well in mitigating the effects of cyclical overproduction prior to about 1927. Over the long term, production and consumption were fairly well in line during the period covered by the earlier valorization measures. The difficulties that developed after the adoption of coffee defense as a permanent policy appear to have resulted from a number of factors, which include (1) attempts to stabilize coffee prices at unduly high level; (2) overliberal credit policies; (3) failure to limit new plantings in the 1920's, which instead were encouraged by

⁴ Data regarding the coffee defense system were derived from an unpublished manuscript, prepared in Latin America Section, Bureau of Foreign and Domestic Commerce, based on reports of the U. S. Department of Agriculture.

⁵ The Foreign Trade of Latin America, Part II, Section 3: Brazil, U. S. Tariff Commission, 1940, p. 24.

(1) and (2) and which have accounted in considerable degree for the large crops of the past few years; (4) administrative deficiencies in the operation of the control machinery; and (5) encouragement of plantings in other countries, which had come to believe that Brazil would engage indefinitely in direct or indirect price-supporting measures.⁶

The European blockade aggravated the plight of the Latin American coffee-producing countries, which supply about 85 percent of the coffee sold on the international markets. Brazil is the most important coffee producer, with an annual output of about 22 million bags, followed by Colombia, producing about 4,000,000 bags annually; El Salvador, Guatemala, and Venezuela, with an annual crop of about 1,000,000 bags each, are next on the list, which includes Mexico, virtually all of Central America, and the West Indies.⁷

The European market normally absorbs 46 percent of the world coffee consumption.⁸ The United States is the most important single market factor, while the small requirements of the home market do not provide much outlet for the surplus.

Lately, the Inter-American Financial and Economic Advisory Committee⁹ has made attempts to find markets for Latin American coffee outside the United States. In the middle of 1940, the Third Pan American Coffee Conference was held in New York City, attended by representatives of the Latin American coffee-producing countries. The main purpose of the Conference was to draw up a quota schedule to determine the share of each country represented in the North American markets, and to make arrangements for handling coffee surpluses. Owing to the necessity for adjusting certain quotas, final adoption of the plan drawn up by the Financial Committee has had to be postponed.¹⁰

THE COCOA INSTITUTE

Established by a decree of the Federal Government, the Cocoa Institute was converted into a planters' cooperative society in 1931.¹¹ The purpose of the Institute is to guarantee long-term and short-term credits to growers, finance purchases of farm equipment, and improve methods of marketing the crop. In addition, the Institute operates an experiment station, aids in highway and bridge construction maintains a modern warehouse in Bahia, and is active in the cocoa export trade.

Aside from the income from its banking and commercial transactions, the Institute is financed from the proceeds of a State export tax on cocoa.¹²

⁶ Foreign Agriculture, Bureau of Agricultural Economics, February 1938, pp. 81, 82.

⁷ Pan American News, op. cit., pp. 8, 9.

⁸ Idem.

⁹ The Inter-American Financial and Economic Advisory Committee was created by the resolution of the Panama Conference on Economic Cooperation which met from September 23 to October 3, 1939. At the second meeting of ministers of Foreign affairs, where the discussion of a plan for economic cooperation and the means of implementing it formed a part of the agenda, the Inter-American Financial and Advisory Committee was instructed: " * * * To create instruments of inter-American cooperation for the temporary storing, financing, and handling of any such (surplus) commodities and for their orderly and systematic marketing * * * To develop commodity arrangements with a view to assuring equitable terms of trade for both producers and consumers of the commodities concerned." Howard J. Trueblood, The Havana Conference of 1940, Foreign Policy Reports, Sept. 15, 1940, p. 163.

¹⁰ Pan American News, op. cit., pp. 8, 9.

¹¹ Brazil Yearbook and Manual, New York, 1940, p. 76.

¹² Bureau of Agricultural Economics, Farm Aid in Foreign Countries, Foreign Crops and Markets June 1, 1938, p. 679.

THE SUGAR AND ALCOHOL INSTITUTE

The Sugar and Alcohol Institute was created by a decree of June 1933. It operates a quota system imposed on sugar refineries to assure equilibrium between the annual crops of sugarcane and the consumption of sugar, in order to prevent excessive production and price disruption.

EXTENSION OF GOVERNMENT INTERVENTION TO OTHER COMMODITIES

In addition to the aid extended to coffee, cocoa, and sugar, a number of other institutes have been set up recently, such as the Lard and Tobacco Institutes, to mention only two. The procedure of the institutes is to tax exports or production in order to achieve the objects of the institute. In the case of cocoa, lard, jerked beef, skins and hides, tobacco, etc., these objects are mainly technical and administrative; their particular aims are to improve quality, to provide proper classification, to combat plant disease etc.

A stimulus to the planting of cereals has been given by a presidential decree of December 15, 1938, according to which flour mills in Brazil are obliged to purchase domestic wheat at a fixed price, the minimum being 600 reis per kilo. In addition, Brazilian flour mills will be required to purchase home-grown wheat on the basis of quota allocations, to be fixed at a level not less than the equivalent of 10 percent of their average annual utilization during the past 5 years. No mill will be permitted to import wheat without first submitting proof of the extent to which it has taken its quota of Brazilian wheat.¹³ The purpose of these measures is to facilitate governmental plans to reduce the heavy imports of this commodity.

Some form of centralized control, not involving production or export limitation, market intervention, or other valorization features exist in many agricultural fields, notably cotton, which is subject to Government control for classification and seed selection.

GOVERNMENT CREDIT TO AGRICULTURE

Probably the most far-reaching governmental measure of the depression period, for the relief of the farm class and of the banks, was the decree of the Federal Government promulgated on December 1, 1933, which reduced by 50 percent all debts secured by mortgage or lien on agricultural property. Debts of farmers to banking houses, regardless of the nature of the debt, providing the debtor was insolvent, were also reduced by 50 percent. Provision was made for reimbursement of the creditors for their loss, through an issue of 30-year, tax-exempt, 6-percent Federal bonds.¹⁴

To render financial assistance to agriculture in addition to the indirect help through the various agricultural institutes, a decree was promulgated in July 1934 providing for the creation of National Rural Credit Bank, with capital supplied by the Federal Government.¹⁵

In July 1937 an agricultural credit law was promulgated authorizing the Government to acquire 100,000 contos of shares of the Bank of

¹³ Bureau of Agricultural Economics, Foreign Crops and Markets, February 15, 1939, p. 107.

¹⁴ Bureau of Agricultural Economics, Farm Aid in Foreign Countries. Foreign Crops and Markets, June 1, 1936, p. 679.

¹⁵ Idem.

Brazil, the capital to be used for extending long-time credits to agriculturists, cattle and sheep breeders, and industrial processors of agricultural and livestock products. In this connection there was formed an Agricultural Credit Department of the Bank of Brazil, which began operations on January 24, 1938, to provide credit for agricultural (and industrial) concerns, and to finance the purchase of seeds, fertilizer, machinery, etc., and a new law governing agricultural mortgages.¹⁵ Furthermore, throughout 1938 the foreclosing of such mortgages by creditors was prohibited.

The general trend in Brazil, accelerated by the 1937 Constitution, is toward increased government intervention. The semiofficial "institutes" represent a logical medium for the administration of farm aid and of such additional intervention in the agricultural organization of the country as may develop under the present governmental set-up.

THE NATIONAL ECONOMIC COUNCIL

The effect of the Constitution of 1937 was to centralize greater power in the Federal Government. The new legislative power is to be exercised "by the National Parliament, with collaboration of the Council of National Economy and the President of the Republic," but in practice the legislative branch is subordinated to the Executive, since Parliament is permitted to legislate only on general principles, leaving the detailed regulations to be issued by the Executive. The following articles of the Constitution relating to the National Economic Council are indicative of its role in Brazil's present economic set-up.

Article 57. The National Economic Council is to be composed of representatives of the various branches of national production, chosen from persons qualified by their special ability, by professional associations or syndicates recognized by law, and insuring an equal representation of employers and employees alike.

The National Economic Council will be divided into five sections:

- (a) The section of industry and trade.
- (b) The section of agriculture.
- (c) The section of commerce.
- (d) The section of transportation.
- (e) The section of credit.

Article 61. The following are attributes of the National Economic Council:

- (a) To promote the cooperative organization of national economy;
- (b) To establish rules for the assistance given by associations, syndicates or institutions;
- (c) To draw up rules for collective contracts of labor between syndicates of the same category of production, or between associations representing two or more categories;
- (d) To report on all projects, whether initiated by the Government or by either of the Chambers, which directly interest national production;
- (e) To organize, either by its own initiative or at the request of the Government, investigations concerning the conditions of labor, agriculture, industry, commerce, transportation, and credit, with a view to increasing, coordinating, and perfecting national production;
- (f) To prepare the basis for the foundation of research institutes which, considering the diversity of the economic, geographic, and social conditions of the Country, shall have for their object—

I. To rationalize the organization and administration of agriculture and industry.

II. To study the problems of credit, distribution, and sale and those relating to the organization of labor.

(g) To report on all questions relative to the organization and recognition of syndicates and professional associations;

¹⁵ Bureau of Foreign and Domestic Commerce, *Economic Review of Foreign Countries*, Washington, 1937, p. 165.

(h) To propose to the Government the creation of corporative institutions of professional activities.

Article 63. At any time powers may be vested in the National Economic Council, through a plebiscite to be regulated by law, to legislate on certain or all matters pertaining to their special province.

The initiative in calling the plebiscite will be within the power of the President of the Republic, who will specify in the respective decrees the conditions under which, and the matter upon which, the National Economic Council may legislate.¹⁷

As the above quoted articles indicate, the new Constitution has strengthened the powers of the central Government, and some of its provisions are designed to encourage the eventual organization of the national economy along corporative lines.

NATIONALIZATION

The nationalization of Brazil's petroleum industry in all its ramifications was effected by decree No. 395 of April 29, 1938.¹⁸ The supplying of petroleum to the nation was declared to be a matter of public utility.¹⁹ This was in line with article 144 of the 1937 Constitution which declares that—

The law will regulate the progressive nationalization of mines, mineral deposits and waterfalls or other sources of power, as well as those industries considered basic or essential to the economic or military defense of the Nation.

The Federal Government of Brazil was given exclusive jurisdiction to authorize, regulate, and control the importation, exportation, transportation (including the construction of pipe lines), distribution, and commerce in petroleum and its derivatives throughout national territory. It may authorize the installation of refineries or deposits, and decide as to the sites of such installations, as well as the production capacity, nature, and quality of the products refined.

The Government may fix maximum and minimum selling price limits for imported or domestic refined products, with a view to securing as nearly uniform a price throughout the country as possible.

The various companies permitted to enter this field must be organized on the following basis: the capital must be held by native-born Brazilians when ordinary common shares are issued, the direction and management of the company must be entrusted exclusively to native-born Brazilians, and Brazilian employees must have an "obligatory participation in the proportion established by the legislation of the country." Those companies which were operating in Brazil in the refining industry at the time the decree was issued were given 6 months in which to reorganize.

The National Petroleum Council was created to act as a governing institution. It is composed of native-born Brazilians appointed by the President of the Republic, representing the Ministries of War, Marine, Finance, Agriculture, Commerce, and Labor, as well as industrial and commercial organizations. The Council was charged with the execution of the measures contained in the decree, as well as the authorization and supervision of the financial and commercial operations of the particular companies involved.

In general, this legislation follows closely the legislative trends of other countries placing all natural resources under the direct control of

¹⁷ New Constitution of the United States of Brazil, Imprensa Nacional, Rio de Janeiro.

¹⁸ Bureau of Foreign and Domestic Commerce, Commerce Reports, Washington, May 7, 1938, p. 411.

¹⁹ The term "supplying" includes production, importation, transportation, and distribution of, as well as commerce in, crude petroleum and its derivatives. The term also embraces imported petroleum and petroleum of national production, irrespective of the sources of extraction.

the central government. Since American interests have practically no investments in refineries in Brazil, and no commercially valuable petroleum deposits have yet been discovered in Brazil, the new law has not occasioned financial disturbances in the oil refining industry.

The most important provision of the legislation from the point of view of refiners was the requirement that they maintain in the country a permanent minimum stock of 25 percent of the quantity they have been authorized to import annually.

Since the beginning of 1936 the Brazilian press has emphasized the question of the nationalization of the foreign insurance companies working in Brazil, and various suggestions have been put forward. These proposals were based on Article 117 of the Constitution, which stipulates that legislation should be introduced for the progressive nationalization of concerns engaged in insurance in all its aspects. In May 1936 the President stated that although the Legislative Assembly had issued no regulation to give effect to Article 117 of the Constitution, no foreign company had been granted a fresh authorization to operate in the country, and those already established in Brazil had been refused permission to engage in new classes of insurance. On June 22 the Minister of Labor, Industry, and Commerce submitted to the President a draft of a law for the nationalization of insurance companies.

ANTI-TRUST LEGISLATION

The Monopoly Act. The Monopoly Act, No. 869 of November 18, 1938, defines crimes against the public economy, and is, in effect, an anti-trust law. The decree proscribes and defines crimes resulting from abuses of social economy, price agreements, monopolies, and similar business practices, punishable by fine and imprisonment. All such crimes will be tried before the Tribunal of National Safety.

The President of the Republic decreed that crimes committed against the public are ²⁰—

- (1) Destruction or illegal use of raw material or products necessary for consumption of the people;
- (2) Abandonment of tilled land or the closing of factories in return for payment to restrain competition;
- (3) Promotion or participation in combinations or agreements to restrain competitors in material used in production, transportation, or commerce, for the purpose of increasing profits;
- (4) Retaining or monopolizing raw material, means of production, or products necessary for the consumption of the people, for the purpose of dominating the market and causing increase in prices;
- (5) Selling merchandise below cost price for the purpose of restraining competitors;
- (6) Using false news, fictitious operations, or other fraudulent means to increase or decrease prices, the value of public bonds, articles of value, or salaries;
- (7) The use of false indications or statements in the sale of bonds or shares;
- (8) Interlocking directorates or officers of companies in the same line of business for the purpose of restraining competitors;
- (9) Operating fraudulently banks, banking and capitalization societies, insurance companies, savings banks, mutual benefit societies, aid and pension societies, or cooperative societies, by causing their bankruptcy or insolvency, or by breach of contract resulting in loss to interested parties;
- (10) Fraudulent entries, registration, or reports for the purpose of concealing profits, dividends, or percentages, or the fraudulent use of reserve funds.

²⁰ Bureau of Foreign and Domestic Commerce, Comparative Law Series, February 1939, pp. 98, 99.

The following are also considered crimes against the people—

entering into agreements to impose a resale price or demand that the buyer shall not purchase from another; departure from official prices of merchandise; attempting to obtain illicit gain by fraudulent processes such as "chains," etc.; violation of contracts of sale or installments, cheating in the drawing of lots, failing to deliver without return of the installments paid, in case of a contract rescinded by the buyer; fraudulently tampering with weights or measures standardized by law; and usurious practices such as charging interest in excess of that permitted by law, or obtaining a profit exceeding one-fifth of the current or fair value of the installment made or promised.²¹

ECONOMIC WARTIME LEGISLATION ²²

In the first 2 months of the [present European] war the President, through a series of legislative decrees, created several boards or commissions with broad powers over the economic life of the country. Decree-law 1,607 of September 16, 1939, having the stated purpose of assuring to the people an adequate supply of prime necessities at reasonable prices, established under the Ministry of Agriculture a Commission of Supply * * * composed of nine members appointed by the President, to regulate production and trade in foodstuffs, raw materials, drugs and medicines, construction materials, fuels, lubricants, and other prime necessities. To attain these ends, the Commission is empowered to (a) ascertain, when necessary, the level of stocks of the commodities mentioned; (b) fix maximum wholesale and retail prices for merchandise throughout the country; (c) purchase commodities in the domestic or foreign market with credits provided, subject to the approval of the President; (d) distribute such commodities at cost; (e) requisition commodities declared by the Government to be of public necessity.

By decree-law 1,641 of September 29, 1939, the President also created the National Economic Defense Commission, * * * a three-man advisory and coordinating board designed primarily to promote and protect foreign trade. The Commission may deliberate with respect to (a) the determination of stocks of national and imported merchandise; (b) the promotion of export commodities easily saleable abroad; (c) the desirability of entering into direct agreements with foreign governments for exchange of merchandise; (d) the export and import trade, with the aim of assuring the country a regular supply of commodities necessary for internal consumption and the functioning of basic industries; (e) the revision of restrictions now existing on production and export of raw materials and foodstuffs; and (f) maritime and land transportation and freight rates. Later, Brazil dispatched an economic mission to tour several American countries for the purpose of determining whether additional markets for Brazilian goods might be secured. * * *

To coordinate domestic and foreign trade, a third commission entitled * * * Production and Supply Control Commission was established under the Ministry of Agriculture. This body is composed of one representative from each of the Federal Ministries and the Prefecture of the Federal District and is empowered to (a) follow fluctuations in stocks of foodstuffs, fuels, lubricants, and raw materials existing in warehouses, mills, depots, and other storage places, in order to ascertain their quantity, quality, and origin; (b) suggest and promote the application of regulatory measures over internal consumption, restraining all speculation; (c) suggest and promote, after considering laws already in effect, measures looking to the development of production and its permanent protection on the market; (d) study production and sales costs from data and information to be requested from producers and merchants; (e) take whatever measures necessary to maintain a just equilibrium between export demands and distribution for internal consumption. The Commission may also, with the President's authorization, (a) regulate the distribution of consumption goods and raw materials in accordance with public necessity; (b) suspend traffic in any merchandise within the national territory in order to make fuller use of the transportation system; (c) suspend the import or export of any merchandise. * * *

²¹ Trust Laws and Unfair Competition in Foreign Countries, Annual Report of the Federal Trade Commission, Washington, 1939, pp. 153-154.

²² The following quotation is from Commercial Pan America, Pan American Union, Washington, September, 1940, pp. 269, 270.

INDUSTRIALIZATION

As was to be expected, efforts toward industrial development were intensified after the outbreak of the war. Dependence upon foreign markets for essential supplies was further emphasized by the dislocation in import sources and maritime communications. This, together with the long-standing desire for industrial expansion as a form of economic diversification, led to promotional moves on the part of both Federal and local governments. Most important of these was the creation, by decree-law 2,054 of March 4, 1940, of the * * * Executive Board of the National Metallurgical Plan. The Board, composed of five members named by the President and directly under him, is empowered to (a) undertake technical studies looking to the construction of mills to produce rails, structures, and plate; (b) organize a national company with the participation of government and private capital to operate the enterprise, which is to employ as large a percentage as possible of domestic coal.

Similar encouragement to the metal industries was evidenced by the offer of the government of Sao Paulo State to advance 1,100 contos (about \$55,000) for the installation of a lead smelter with a daily capacity of 10 tons.

By decree-law 1,834 of December 4, 1939, the Federal Government was authorized to extend credit to lumber operators and fiber plantations for the construction of mills to produce cellulose and wood-pulp for the paper industry, such credits to take the form of 15-year 7 percent first mortgage loans. Another stimulus to fiber plantations was provided by decree-law 1,950 of December 30, 1939, exempting from the consumption tax textiles made with domestic caroá and coconut fibers.

Experiments with domestic coal in locomotives on the government railroads were intensified, with a view to further replacing coal imported from Germany and Great Britain. It was reported in February that construction of three ovens for the manufacture of metallurgical coke had been begun in southern Brazil.

FOREIGN EXCHANGE CONTROL

Regulation of foreign exchange transactions by the Government is not new in Brazil's monetary history. At times, when the world prices of coffee have been too low, the milreis was allowed to depreciate to maintain the income of coffee growers in terms of Brazilian currency. Currency depreciation in Brazil further served as an instrument for the encouragement of agricultural export trade and contributed to the protection of domestic industry and agriculture.

Brazil's exchange control system was first inaugurated in August 1931 when it was provided that all foreign exchange transactions be carried out through the Bank of Brazil.²³ The system of foreign exchange control has been frequently amended, its main characteristics, however, remained the same, i. e., in addition to the official foreign exchange market, there have been one or more free markets in existence in which the value of the milreis has been lower than in the official market.

Exporters have been obliged to sell a certain percentage of their export bills to the Bank of Brazil at the official rate, while the balance could be sold in the free market. For a short period in 1937 the compulsory sale of export bills was suspended; on December 24, 1937, however, a decree was signed giving the Bank of Brazil a monopoly of the purchase of export bills, establishing a priority list for the allocation of exchange, and imposing a 3 percent tax on exchange purchases.²⁴ The tax was changed to 5 percent in March 1939.

²³ For a general outline of the exchange control system in Latin America see p. 112.

²⁴ Bureau of Foreign and Domestic Commerce, Commerce Reports, January 1938, p. 97.

The present exchange control system in Brazil, which became effective on April 8, 1939, recognizes three types of exchange: official, free, and special free.²⁵

Only the Bank of Brazil is authorized to operate in the official exchange market. 30 percent of the value of export bills must be sold to the Bank, and the exchange resulting from these transactions is used by the Government to meet its commitments. As regards the free exchange market, all banks may participate in it, as well as in the special free exchange market. Exchange sold in the latter is bought from foreign tourists in the form of letters of credit, traveler's checks, or foreign paper currency. Exchange obtained from this source has to be used toward the sale of letters of credit, the sale of drafts or foreign paper currency to persons authorized by the Bank of Brazil.

Foreign exchange regulations in Brazil have been changed frequently, but the system is expected to remain in force unless an increased demand for Brazilian exports materially increases the country's foreign exchange resources. Meanwhile, foreign exchange control, supplemented by clearing or compensative agreements, will continue to be used for influencing commercial policy by furnishing the available foreign exchange for the importation of certain commodities and withholding it for others.

²⁵ The Foreign Trade of Latin America, Part II, Section 3. Brazil, p. 19. U. S. Tariff Commission, 1940. Recent quotations for the different Brazilian exchange rates (averages for March 1940) are as follows: Official \$0.0606; free market, \$0.0504; special free market, \$0.0483. Commerce Reports, Bureau of Foreign and Domestic Commerce, June 8, 1940.

PART VI

STATE REGULATION IN CHILE

by

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STATE REGULATION IN CHILE

OBJECTIVES OF STATE INTERVENTION

State intervention in Chile is a comparatively recent innovation. In the original structure of the country there were only two classes—landowners and peasants. The development of the mining industry, and the arrival of European immigrants, however, brought new social classes into being, and the new conditions gave rise to many social problems. But not until the post-war period, when the world-wide economic depression intensified social problems, did State intervention become an active force. The year 1924 witnessed a great expansion in social legislation, followed a few years later by State participation in industrial and financial activities.

Intervention on the part of the Government in Chile has, in some instances, been prompted by a desire to reduce the country's dependence on foreign interests. Considering the large foreign interests in the nitrate industry; American ownership of the copper mines, electrical supply services, and telephone services; and the fact that commerce and navigation are largely in foreign hands, it is but natural that a nationalistic feeling should manifest itself.

The foreign ownership of the nitrate industry and copper mines has meant that even when there is a substantial demand for these two main export articles, the income derived from their sale does not remain in Chilean hands. In 1929, for example, nitrate and copper exports from Chile amounted to \$240,000,000, but of this amount only \$60,000,000 remained in Chile.¹

The measures adopted by Chile to reduce the role played by foreign capital have been less severe than those adopted by many countries of the world. Nevertheless, the Labor Code reserves 85 percent of employment and wages to Chilean citizens. Moreover, income taxes on domestic companies are some 75 percent lower than for foreign companies; national banks are exempt from a minimum tax on deposits which foreign banks are required to pay. Further, coastwise shipping (except passengers) is reserved to the national marine, and air transport within the country is restricted to the National Air Line.²

The general tendency is thus toward more and more nationalization. Chile, however, suffers greatly from lack of national capital, and foreign capital is considered essential to future development. The tendency, therefore, is to reconcile national ambitions with the protection of those foreign undertakings, which are considered beneficial for the country.

In directing and regulating Chile's economic life, the major objective of the Government has been to develop a better balanced economy. Chile is primarily an agricultural and mining country, mainly dependent upon foreign trade. For half a century nitrates (including

¹ *Economic Relation with Latin America*, Michigan Business Papers, No. 6, University of Michigan, Ann Arbor, January 1940, p. 38.

² *Economic Conditions in Chile*, Department of Overseas Trade, London, November 1934, p. 56.

iodine) and copper have accounted for upward of 80 percent of the total value of all exports. The development of synthetic nitrates and the onslaught of the depression brought home the danger of this dependence upon only two commodities. Since that time, the Government has endeavored to diversify Chile's economic structure, foster industrialization through customs duties and exchange restriction, create demand for the country's agricultural products, and generally to reshape the economic set-up.

GOVERNMENT IN BUSINESS

PUBLIC UTILITIES

In the field of public services, Chile long ago adopted State ownership of railways and port work, subsidies to the merchant marine, and national aviation services. In 1936 the Government acquired partial control of and a financial interest in the principal electric light and power concern, the Cia. Chilena de Electricidad, a subsidiary of the American and Foreign Power Corporation, New York. This is the largest public utility company in Chile next to the Chilean State Railways. Government ownership of railways has been extended by acquisition of the Chilean section of the Transandean railway.³

The Bulletin of the Chilean Chamber of Deputies reported as of August 9, 1938, that a bill was introduced for the nationalization of electric light and power companies throughout the country. The deputy introducing the bills declared that—

there are powerful reasons * * * which justify a project of law which may carry on to the effective nationalization of all enterprises of electric energy in the country.

The deputy continued with the statement that Chilean capital has always been opposed to this type of investment because, in the large cities, the electric industry has been controlled by international capitalism, which has never earned an income for national capital. Moreover, the deputy remarked—

Foreign capital, whether English, German, or North American, which has undertaken the sale of electric power in Chile, has converted itself into irritating monopolies characterized by a ferocious spirit of profit, an excessive political control, shameful subordination of the press. Already we have demonstrated how all the electric contracts have been laughed at by the companies, whether they be those effectuated with the Municipalities or with the Government.

Although the bill has not yet been passed, it is of interest to review its provisions, as it is indicative of the prevailing attitude toward private ownership of public utilities.

Under the provisions of article 1⁴ of the bill, all corporations devoted to the supply of electric energy within Chilean territory would be declared public utilities, whether such energy were sold for light, power, heat, or locomotion. Article 2 would authorize the President of the Republic to expropriate the total amount of shares of all corporations in the industry. Compensation for each share of stock would be the average market price from August 1, 1936, to July 31, 1938, plus 20 percent of this average. A commission composed of the President of

³ Report on Economic and Commercial Conditions in Chile, Department of Overseas Trade, London, May 1937, pp. 36, 37.

⁴ Bureau of Foreign and Domestic Commerce, Comparative Law Series, Washington, October 1938, p. 459.

the Stock Exchange, the Director of Internal Revenue, and the Director of Electric Service would fix the value of the stock on the basis of the preceding article. The present Chilean Electric Co. would be administered by a provisional board of directors. Other corporations which might be expropriated would be administered by delegates appointed by the President of Chile. Under the provision of Article 9 of the draft, the President of Chile would be authorized to issue the necessary internal bonds for payment of the expropriated shares of stock.

THE NITRATE INDUSTRY

In recent years the nitrate industry has been the subject of far-reaching legislation. The whole nitrate industry, in spite of its commercial appearance, can be said to be a government-controlled concern, since it is regulated officially as to finance, production, sales, and profits. In 1930, when the Government decided to reorganize the nitrate industry by concentrating the resources of all companies into one concern, usually referred to as Cosach (Companie Salitrera de Chile), it became a 50-percent shareholder of the corporation. On the failure of the Cosach, the interest of the Government was transferred to a newly formed sales corporation, known as the Nitrate and Iodine Sales Corporation, to which all the nitrate producers were required to deliver their nitrate at a price fixed by the corporation to cover costs exclusive of capital charges. Of the profits obtained by the Sales Corporation, 25 percent is to be allocated to the Government in lieu of taxes, and the remaining 75 percent to be distributed to the producers in amounts corresponding to their deliveries.

The enabling act of the Nitrate Sales Corporation may be described as the first step of an attempt to put the Chilean industry on a basis permitting of more effective competition with the synthetic nitrogen producers. The following articles of the act are indicative of the nature and activities of the corporation:⁵

ARTICLE 1. Because the national interest so demands it, there is established in favor of the State, and on the conditions determined by this law, a monopoly of the exportation of and trade in nitrate and iodine in Chile. Nevertheless, the President of the Republic, in accordance with the provisions of the law, may transfer or lease the right to the monopoly for a period not exceeding 35 years, to the legal entity with the name "Chilean Nitrate and Iodine Sales Corporation" (Corporación de Ventas de Salitre y Yodo de Chile) which is created by this law. Consequently, the exportation of and trade in these products may be undertaken only by the State or by the corporation to which reference has been made.

The monopoly established by the present law shall terminate in case of the dissolution of the corporation or upon the termination of the contract of transfer or lease referred to.

* * * * *

ART. 2. The objects of the corporation are to acquire nitrate and iodine from the producing enterprises, to sell, export, transport, and distribute nitrate and iodine, to effect propaganda and to effect, in general, the commercial and other operations and transfers expressed in this law and which constitute the purposes of the corporation.

INTERNATIONAL NITROGEN CARTEL⁶

A series of cartels have been in existence in the world nitrogen industry since 1929. Prominent individuals connected with the large European producing interests had for many years been meeting

⁵ Bureau of Foreign and Domestic Commerce, Chemical Division, Special Circular No. 378.

⁶ Chemical Nitrogen, Report No. 114, Second Series, U. S. Tariff Commission, Washington, 1937, pp. 82-86.

informally, but the actual formation of the cartels was largely the outcome of the two international nitrogen conferences held in 1926 and 1927.

First cartel. On June 26, 1929, announcement was made of the first International Nitrogen Cartel, consisting of three separate agreements between the German Nitrogen Syndicate, Imperial Chemical Industries, Ltd. (British), and Chilean nitrate producers. The pact was said to embrace about 80 percent of the world nitrogen production. Agreements provided for cooperation as to propaganda for price uniformity and for some allocation of production and export quotas. The duration of the agreement was for 1 year.

The second International Nitrogen Cartel was established August 1930 in Berlin, after several months of negotiation. It included (a) domestic markets of producing countries; (b) colonial markets for producing countries; (c) other markets, except the United States; (d) the United States market. Allotment of nitrogen exports to the principal nonproducing markets was to be based on the pure nitrogen content of the materials. Special export contingents were to be granted to special products to meet the demand for each type in those markets in which they were not produced. The market of the United States and its dependencies was to be open to all signatories without quota.

The division of markets indicated was implemented by assigning production quotas to each signatory except Chile, and fixing a quota for Chilean exports to Europe. Prices were not to be increased over those prevailing during the preceding year.

An indemnity fund of £3,000,000 was established, out of which compensation was to be paid to convention members who reduced their production to less than 70 percent of capacity, and who suffered losses through this curtailment. The Chilean producers were to contribute 25 percent of this fund, in return for no restriction on production and no limitation on sales outside those set forth in the pact, and for an agreement that the pact would not apply to the United States. An administrative organization was to be established to handle the compensation fund and other matters, including buying up surpluses and holding them in anticipation of more favorable market conditions.

The second international nitrogen cartel was terminated in July 1931, and there was a complete break-down of negotiations for renewal of the pact. The break was attributed to the efforts of Germany to impose a tariff on Chilean sodium nitrate. Unlike other national groups, the Chileans were reported to be unprotected by a previous agreement with the German Nitrogen Syndicate, and hence withdrew. A private agreement was reached by the German, British, and Norwegian producers. A price war came on the heels of the break, and France, Poland, and Czechoslovakia, following Germany's lead, imposed embargoes on many nitrogenous products.

The formation of the third cartel became known in the fall of 1932, following the signing of an agreement in London on July 21 of that year, by representatives of Great Britain, France, Germany, Italy, the Netherlands, Belgium, Switzerland, Poland, Czechoslovakia, Norway, and Chile. A master agreement was effected through a series of contracts entered into by Germany, England, and Norway, as a unit, and each of the other European countries mentioned above

except Switzerland, providing for cooperation on prices and the limitation of production. These agreements were to run until June 30, 1934. The central group (Germany, England, and Norway) then successfully negotiated an agreement with the Chilean producers. The regulation of certain export markets, and the compensation to certain producers for restricting production, continued under these agreements.

The European Nitrogen Syndicate continued to function through 1933-34 under the terms of its agreements of the preceding year. Efforts in the late spring and summer of 1933 to renew agreements with Chile, however, failed and that country was not a member of the cartel. The breakdown of negotiations was attributed to failure to agree on price structure, and the objection of the Chileans to the numerous import restrictions previously imposed by most member countries.

Beginning in November 1932, Chile entered a series of clearing agreements with various countries which helped to alleviate its position outside the cartel and strengthen the cartel of the Chilean industry. In the spring of 1934 an agreement was reported to have been reached between the European Nitrogen Syndicate and the Japanese producers.

A renewal of the European Nitrogen Syndicate for another year, or until June 30, 1935, was signed in Paris in April 1934. A penalty clause for member countries exceeding their export quotas was introduced at this time. Apparently receipts for exports in excess of quotas were to be paid into the compensation account, upon which European producers not realizing their export quota allowances were to have first claim.

In July or August 1934 an agreement was reached between the European Nitrogen Syndicate and Chile, likewise terminating in June 1935. The following important provisions were reported among its terms:

- (1) Chile was to receive a quota of 500,000 metric tons of nitrogen for export into syndicate member countries.

- (2) In uncontrolled markets (Sweden, Denmark, Spain, Egypt, and eastern countries) Chilean sales might equal sales in 1933.

- (3) The United States market was excepted from the agreement and was to be open to all producers without restriction.

- (4) Price ratios were established between the different grades of fertilizers.

In September 1935 the Imperial Chemical Industries, Ltd., issued a communique relating to the International Nitrogen Cartel stating that the agreements were concluded by groups representing the nitrogen industries of Belgium, Czechoslovakia, Germany, Great Britain, Netherlands, Italy, Norway, Poland, and Switzerland, on the one hand, and the Chilean nitrate industry on the other. These agreements provide for the regulation and sharing, on approximately the same lines as before, of sales between the parties in the world markets, but do not cover the United States. They also contain provision for the regulation of prices with due regard to the legitimate interest of agriculture. At the close of the year an agreement was reached between the Japan Sulphate of Ammonia Manufacturers'

Association and the local representative of European nitrogen producers covering the trade for 1936 and 1937. The agreements were effective from July 1, 1935, for a period of 3 years.⁷

Following long negotiations extending over many weeks, the International Nitrogen Cartel, expiring July 1, 1938, was prolonged by the signatory members at a meeting in Paris on July 13, 1938, for a further period of 3 years. Although the exact terms of the new agreement were not published, it is understood that in general they are similar to those of the old agreement. The pact embraces European synthetic producers, organized as one group, on the one side, and the Chilean natural sodium nitrate industry, as one unit, on the other.⁸

OTHER FORMS OF GOVERNMENTAL PARTICIPATION IN INDUSTRY

On a smaller scale than in the nitrogen industry, the Government has participated in the business of the Army Workshops in Santiago which manufactures a variety of iron and steel products. Also, it subscribed a part of the capital of the Valdivia Iron and Steel Works.⁹ In other instances Government participation was brought about through requests to State insurance pension bureaus to subscribe capital to industries considered essential to the national interests, i. e., the establishment of the National Bag Factory in Santiago, formed for the purpose of reducing the dependence of Chile on imported jute sacks. The social bureaus of the State have large reserves, raised by compulsory contributions decreed by law, and are in the position to compete with private capital. Since they are in close connection with the Central Administration, they can be used as instruments of economic policy.¹⁰

The United Breweries in Chile (Compania de Cervecerias Unidas) have a complete monopoly in the manufacture and sale of beer. Among the products produced by the company are beer of different grades, soft drinks, carbonic acid, ice, and malt barley.

CREATION OF FISCAL CORPORATIONS

The Popular Front Government which assumed office in Chile on December 24, 1938, was elected on a platform embracing the improvement of social and economic conditions, to be achieved through planned industrial and economic development of the country. The disastrous earthquake in southern Chile a few weeks after the inauguration of the Government caused such heavy damage in life and property that new plans had to be drawn up.

As a consequence, a bill was submitted to Congress in January 1939, covering the reconstruction of the devastated areas and a plan for national economic development. The law (No. 6334) as enacted in April 1939 created: (1) a Reconstruction and Relief Corporation (Corporacion de Reconstruccion y Auxilio) to rebuild devastated areas, and (2) a Corporation for the Development of Production (Corporacion de Fomento de la Produccion), both having a life of 6 years. The first organization was granted widespread powers in all

⁷ Bureau of Foreign and Domestic Commerce, *World Chemical Developments in 1935*, Washington, 1936, pp. 3, 4.

⁸ Bureau of Foreign and Domestic Commerce, *World Chemical Developments in 1938, 1939*, pp. 3, 4.

⁹ *Economic Conditions in Chile*, Department of Overseas Trade, London, November 1934, p. 52.

¹⁰ *Ibid.* p. 53.

matters of relief and reconstruction and the second was granted similar powers to promote industrial development and low-cost housing.

For financing the project external and internal loans were authorized, and sharp increases in practically all taxable income categories were imposed, particularly those covering corporate earnings, with the heaviest burden on the large mining companies.¹¹ From the point of view of American trade and investments in Chile, the most significant provision of the new legislation is the additional taxes levied on copper companies employing more than 200 workers. The copper companies now pay 18 percent income tax, which goes toward the service of foreign debt. An additional income tax of 10 percent raises this tax to 28 percent, and other provisions will raise it to 33 percent. Thus the copper companies will contribute a very considerable share to Chile's program of reconstruction and industrial development.

THE LAW FIXING OVERPRODUCTION

The Chilean Government acquired far-reaching powers over industrial production through Decree No. 1649, enacted for the application and execution of Decree Law No. 281, of July 25, 1932, the latter commonly referred to as the Law Fixing Norms Relative to Overproduction.¹²

Under law 281, the President of Chile has authority of his own accord or at the request of producers, to declare a "state of overproduction" in the country of any article of manufacture, after a prior report from technical organizations of the Government (art. 1).

Following the declaration of a state of overproduction, new factories of the respective article may be opened only by express authorization of the President (art. 2). Thereafter the President will establish the "qualities, * * *, and price of sale," in harmony with the cost of production and distribution; he may also prevent profiteering and speculation in the article for purposes of unfair competition * * * or excess profits (art. 3) * * * [according to art. 4]. "The President of the Republic is authorized to regulate the customs duties which similar foreign articles pay to those declared in state of overproduction and the materials necessary for the elaboration of the latter which may not be produced in the country." A "complementary tax" of not less than 10 percent nor more than 20 percent is levied upon the sale of the articles declared in a state of overproduction (art. 5).¹³

Decree No. 1649 contains the regulations regarding the application of the above described law, divided into five titles. Under title I the President may declare, ex officio, or at the request of the interested party, the overproduction of an article if it is proved that it is produced domestically in satisfactory quality and price, and that effective productive capacity is larger than is necessary for an efficient supply.

This declaration may be total or partial, including the whole country or a part of it (art. 5). Total overproduction may be

¹¹ Bureau of Foreign and Domestic Commerce, *Economic Situation in Chile in 1939*, Washington, June 1940, p. 1.

¹² Henry P. Crawford, *Laws Affecting Foreign Commerce*, Bureau of Foreign and Domestic Commerce, Commerce Reports, December 9, 1939, p. 1139.

¹³ *Idem*.

declared if the internal market is saturated and it is commercially impossible to export the excess, and partial, when the market of a determined zone is satisfied and it is impossible to sell the excess in other regions of the country or abroad (art. 6). Nevertheless, new factories may be opened and old ones enlarged by express authorization when their exclusive purpose is the exportation of the total production of the article affected in the first case, or its increase in the second (art. 15).

The decree placed certain restrictions upon transfers to foreigners. Those factories which may obtain raw materials or basic products in their elaboration, either directly, as byproducts, or as secondary products, may not be transferred to foreign natural or juridical persons without express authorization of the President (art. 17).

* * * * *

Title II establishes heavy money fines for infringements, and in certain cases, the merchandise may be confiscated and the establishment found violating the law may be permanently closed.

* * * * *

, An Industrial Register is created; before purchasing new equipment, the management of industrial establishments must first obtain permission from the Government, as well as supplying any data requested of them.¹⁴

SUPERVISION OF FOREIGN TRADE AND EXCHANGE CONTROL

The Chilean Government maintains a strict control over exports as well as imports, regulating both foreign exchange and quality.

All banking, insurance, and commercial operations, both import and export, involving foreign exchange transactions, are subject to the control of the Chilean Government. This control is administered by the Commission of International Exchange. No imports may be landed, no exports shipped, without approval. On the one hand, the Commission supervises the transfer of funds from Chile to foreign countries, because goods can neither be imported nor paid for without prior sanction. On the other hand, it will not allow goods to be exported without receiving adequate guaranties that the proceeds of their sale in foreign currencies shall be repatriated and placed within the orbit of its control.¹⁵

The Agricultural Export Board possesses wide powers over the production and export of agricultural products. The permanent objectives of this organization are as follows:

(1) To stimulate by all the means within its power the development of agricultural exports;

(2) To organize agricultural commerce, following a policy of remunerative prices for the producers which will ensure their obtaining their production costs and a fair profit;

(3) To create and expand in the country new industries and agricultural cultivation, the products of which have export possibilities, and which could replace similar products from abroad;

(4) To determine what portion of agricultural products shall be exported, after deducting the quantities necessary for internal consumption, sowing, and carry over.¹⁶

¹⁴ Idem.

¹⁵ Report on Economic and Commercial Conditions in Chile, May 1936, Département of Overseas Trade, London, p. 29.

¹⁶ Economic Conditions in Chile, Department of Overseas Trade, London, November 1934, pp. 54, 55.

The activities of the Board in stimulating industries include grants to educational institutions, organization of exhibitions, financing of experimental work with new agricultural industries. The principal activity, however, is in the stimulation and control of the agricultural export trade, which involves payments of export premiums, the establishment of export standards of quality, etc.

The funds of the Agricultural Export Board are derived from taxes levied on milling, malting, distilling, brewing, and wine making.

The functions of the Board involve a high degree of Government direction of production and export in one of the country's principal industries.¹⁷

GOVERNMENT AND CREDIT

Financial planning has generally taken the form of providing cheap borrowing facilities for the small agriculturalist and industrialist. This has been achieved through the creation of credit institutions financed by Government capital, or by discount facilities with the Central Bank which are decreed by law.

The following are the credit institutions financed by Government capital:

Agricultural Credit Bureau. This institution was formed in 1926; 90 percent of its capital is owned by the State. Its purposes are to grant loans to farmers to purchase agricultural implements, etc. It has also acted as importer, buyer, and distributor of seeds, fertilizer, etc., which it resells to farmers on credit.

The Mining Credit Bureau was established in 1937 to extend credit for the development of the mining industry. It is empowered to participate generally in all phases of activity connected with the development of the mining industry. Its capital has been subscribed by the State. The Bureau has established a number of plants on its own account for the exploitation of minerals.

The Agricultural Colonization Bureau is the administrative agency of areas selected for agricultural colonization. It advances credit to farmers for the purchase of small holdings, for improvement work, etc.

The Coal Development Bureau may grant loans for the purchase of all kinds of industrial equipment using coal for power purposes. It can also advance money for the development of coal mines and the purchase of the necessary machinery.

The Industrial Credit Institution was created in February 1928 to grant credits to domestic manufacturing industries and to foreign undertakings with more than 5 years' residence in the country. Loans are secured by liens upon industrial property. The institute is empowered to take an active part in the development of new products in existing industries, in the establishment of new factories to manufacture articles not produced in Chile, and to take over the control over industries, if circumstances should warrant it.¹⁸

THE COMMISSARIAT GENERAL OF SUBSISTENCES AND PRICES

Decree Law No. 520, the "Law Creating the Commissariat General of Subsistences and Prices," was promulgated on August 30, 1932; during 1934-38 it became practically inoperative, but since July 1939

¹⁷ Ibid., p. 55.

¹⁸ Ibid., pp. 48, 49.

and particularly since the outbreak of war in Europe on September 3, it has become effective.

Decree Law No. 520 is composed of 10 titles and a final enabling paragraph.¹⁹ In article 3 the Commissariat is empowered to deal with all articles of "prime necessity and of habitual use or consumption," and article 4 declares that all agricultural lands or industrial or commercial establishments producing or distributing such articles are to be considered as a public utility. Article 5 allows expropriation of any enterprise which is not being worked, and article 6 gives authority to force producers to produce goods in the quantities, qualities and conditions determined by the Government, with a penalty of expropriation for any "rebellious" producer. Article 7 states that when expropriation has been decreed, the Commissariat will take immediate possession of the properties. Article 9 permits the declaration and establishment of government monopolies and article 11 gives the Commissariat a preference demand on foreign exchange availabilities. Article 22 of title III gives wide powers for the control of imports and exports. Under paragraph i, the Commission may request the President of the Republic to limit or prohibit the exportation of articles declared to be of prime necessity when they are indispensable for the use of the people.

Since the outbreak of war in Europe the law has been applied with increasing vigor. The Commission of Subsistences and Prices has issued decrees and rulings fixing prices, closed and fined dealers in numerous articles of common consumption; regulated the sale of a wide range of important industrial and construction goods; granted a practical monopoly for the importation and distribution of tea, and has imposed a rigid control as regards the wholesale and retail distribution of sugar. A number of business houses attempting to profiteer were closed.

The Diario Oficial of October 31, 1939, contains Decree No. 282-a, issued by the Commissariat General of Subsistences and Prices, ordering that all articles of prime necessity or of common use or habitual consumption shall be sold throughout the Republic at the prices which were in effect on August 25, 1939. Any increases in such prices must receive the prior approval of the Commissariat.

A recent decree which appeared in the Diario Oficial on May 6, 1940 (Decree No. 339), is indicative of the spirit that governs the Commissariat at the present time. It declares that dwellings and business properties the rental of which is not more than 700 pesos per month shall be considered as of "primary necessity and habitual consumption" and, as such, subject to the control of the Commissariat General. The decree defines in detail the rights of the owner and rights of the tenant, and prohibits any increase in rent except for causes expressly approved by the Commissariat.

PROPOSED MONOPOLIES

There is a possibility that the Chilean Government will put into effect Law No. 5124 of May 17, 1932. Under the provisions of the latter the State has the exclusive right to import, distribute, and sell all petroleum and its byproducts and substitutes. Article II provides

¹⁹ Special Report No. 6, Office of the United States Commercial Attaché, Santiago, Chile, October 7, 1939.

that the organization operating this monopoly concession shall be national and states that it must be—

- (1) Legally constituted and established in Chile;
- (2) with at least 75 percent of the partners or shareholders of Chilean nationality, and with a directorate entirely Chilean;
- (3) with capital at least 75 percent Chilean, by reason of the Chilean nationality of the shareholders or partners constituting the company.

According to article 5 of Law 5124, the tangible assets of the company are declared to be public property and the President of Chile is authorized to expropriate storage tanks, etc., for which indemnification must be paid. This law has never been used, but under article I, the State monopoly proposed can be established at any time, merely by executive decree.

The Government considers itself entitled to receive the profits from petroleum sales in Chile, and hence felt that it must either put into effect the monopoly law as it stands, or work out an arrangement with the companies to accomplish the same result.

Although the monopoly provisions of this law have not yet been put into effect, the Government has sponsored and indirectly participated in the financing of a stock company, the Cia de Petroleo de Chile (Copec), which was organized in 1934 to import and distribute petroleum products in direct competition with the two leading foreign concerns, Shell-Mex Chile Ltd. (British), and West India Oil Company, a Standard Oil affiliate. Legally Copec is not a government entity; but assistance has been given by the Government through the granting of exchange at favorable rates. As the Chilean Government considers it undesirable for the country to be entirely dependent upon foreign distributing organizations, oil prospecting continues in Chile. One million pesos were appropriated for this work during the first part of 1937.²⁰

A news item dated January 10, 1940, indicated that a project was drawn up to establish a tobacco monopoly. Another of January 31, 1940, contains Decree No. 83 issued by the Commissariat General of Subsistences and Prices, providing regulations governing the operation of article No. 6 of Decree No. 72-a, establishing a monopoly of the tea trade. This decree, dated August 28, 1939, explains the necessity of regulation on grounds of social and economic necessity. It gives one firm a practical monopoly of the supply of all the ordinary grade tea for consumption in Chile.

It was reported in May 1940 that the Government contemplates establishing control over the metallurgical and ship-building industries, under a "National Council of Shipyards and Metallurgical Industries." The Council would have a monopoly on the trade in scrap iron.

According to press reports, the Chamber of Deputies' committee on constitutionality, legislation and justice have reported favorably a bill giving the Government absolute supervisory control over those industries which may be declared monopolies. The bill contemplates the creation of a control committee to be known as "The Government

²⁰ Report on Economic and Commercial Conditions in Chile, Department of Overseas Trade, London, May 1937, p. 37.

Commission for the Protection of Constitution"; and the suggested powers are sweeping and inclusive. It appears to be a duplication of the already overlapping laws "Creating the Commissariat General of Subsistences and Prices" and "Governing Over-production" and is in conflict with them. It would further extend the Government's power to impose a system of rigid control. This bill would, if enacted by Congress, permit close control over several American enterprises, including perhaps the electric power and telegraph companies.

· PART VII

REGULATORY EXPERIENCE IN MEXICO

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REGULATORY EXPERIENCE IN MEXICO

THE MEXICAN REVOLUTION

Mexico has undergone a slow process of socialization since the revolution of 1910. Although the direct cause of the revolution was a political issue (the presidential succession), in reality it was brought about by the economic discontent of the impoverished masses. And while the revolution marked a step toward the betterment of social and economic conditions and toward democracy, it failed to equip the masses with legal tools by which to maintain control over their leaders. The Mexican revolution entered a new stage with the inauguration of President Cardenas (November 30, 1934), under whose administration the drive toward the promotion of nationalism, land reform, organization of labor, and a better distribution of wealth was markedly intensified.

The most important element in Mexico's economy is agriculture, which absorbs about 70 percent of the population. Agriculture, however, has never been an important source of income in Mexico. Owing to the poor quality of land, the agricultural products consumed by the entire population of Mexico must be produced on only 7.5 percent of its total area, of which 80 percent depends on seasonal rains.¹ In 1910, the year in which the revolutionary movement began, 95 percent of the Mexican farming population consisted of landless peasants, and not until very recent years did an improvement in the distribution of land take place.²

Foreign investments form an important chapter in Mexico's economic history. Mining and smelting, public utilities, and wholesale and retail merchandising are controlled by foreign capital. Of the total investment in mining and smelting, less than 5 percent is Mexican. The Mexican participation in public utilities and merchandising is greater than 5 percent but much less than half.³

The reaction of the leaders of the Mexican revolution to the uneven distribution of wealth is epitomized in article 27 of the 1917 Constitution,⁴ according to which the state has the right to intervene constantly in the distribution of land. Discussing the provisions of the 1917 Constitution, which is looked upon by Latin Americans as a sort of Magna Charta, it should be remembered that political realities in Mexico have never quite corresponded to the legal forms. The interpretation of the Mexican Constitution depends upon the leader in power at the time. With these reservations in mind, we may discuss the pertinent provisions of the Mexican antimonopoly legislation.

¹ Frederico Bach, *The Distribution of Wealth in Mexico*, *The Annals of the American Academy of Political and Social Science*, Philadelphia, 1940. p. 73.

² See pp. 155-157.

³ Edgar Turlington, *Foreign Investments*, *The Annals of the American Academy*, op. cit., p. 106.

⁴ See p. 155.

ANTIMONOPOLY LEGISLATION

Mexican antimonopoly legislation is embodied in article 28 of the Constitution of 1917:

ART. 28. There shall be no private nor governmental monopolies of any kind whatsoever in the United States of Mexico; nor exemption from taxation; nor any prohibition even under cover of protection to industry, excepting only those relating to the coinage of money; to the postal, telegraphic, and radio-telegraphic services; to the issuance of bills by a single banking institution to be controlled by the Federal Government; and to the privileges which for a limited period the law may concede to authors and artists for the reproduction of their work; and lastly those granted as inventors or improvers of inventions for the exclusive use of their inventions.

This law will accordingly severely punish and the authorities diligently prosecute any accumulating or cornering by one or more persons of articles of prime necessity for the purpose of bringing about a rise in price; any act or measure which shall stifle or endeavor to stifle free competition in any production, industry, trade, or public service; any agreement or combination of any kind entered into by producers, manufacturers, merchants, common carriers, or other public or quasi-public service, to stifle competition among themselves and to compel the consumer to pay exorbitant prices; and, in general, whatever constitutes an unfair and exclusive advantage in favor of one or more specified person or persons to the detriment of public in general or of any special class of society.

Associations of workers organized to protect their own interests shall not be deemed as constituting a monopoly. Nor shall cooperative associations or unions of producers be deemed monopolies, when, in defense of their own interests or of the general public, they sell directly in foreign markets national or industrial products which are the principal source of wealth of the region in which they are produced, provided they are not articles of prime necessity and provided further that such associations be under the supervision or protection of the Federal Government or of the States, and provided furthermore that authorization be obtained in each case from the respective legislative bodies. These legislative bodies may, either on their own initiative or on the recommendation of the Executive, revoke, whenever the public interest shall so demand, the authorization granted for the establishment of the associations in question.

The Mexican antitrust law was promulgated in the *Diario Oficial* of June 28, 1926. The regulative laws based on article 28 of the 1917 Constitution defined monopoly as the concentration of necessities in the hands of a few persons, that may have as an object the raising of prices; acts tending to restrict free competition in production, distribution, or services; agreements on the part of producers, manufacturers, merchants, or companies offering services, to do away with competition for the purpose of raising prices; anything that may constitute an undue, exclusive advantage to one or various persons, to the disadvantage of the general public or any social class. Any such acts were forbidden.

THE ORGANIC LAW RELATIVE TO MONOPOLIES

The organic law relative to monopolies, signed on August 22, 1931,⁵ rendered null and void the antitrust law of 1926. It provided that—

or the effects of this law, a punishable monopoly is understood to be any industrial or mercantile condition in which free competition is suppressed with injury to the general public or to any class of society; and by state monopoly (*estanco*) a monopoly constituted in favor of the state in order to secure profit to the treasury.

The Mexican Monopoly Act of August 24, 1931, prohibited the establishment of private or governmental monopolies or any act

⁵ *Diario Oficial*, August 24, 1931, referred to in Bulletin 288 of the Division of Commercial Laws, Bureau of Foreign and Domestic Commerce, Oct. 12, 1931.

which injures the public by preventing free competition in production, industry, commerce, or services. Exceptions include the State's operation of radio, telegraph, banks of issue, coinage of money, the postal services, and patent and copyright privileges. Remission of taxes by the State or Federal Government to private interests is prohibited.

Certain acts are cited as tending to create monopoly, including (1) combination or agreement to charge exaggerated prices, (2) a regular or permanent practice of selling goods or rendering services at less than cost, (3) the use of coupons or other devices at less than cost, (4) discrimination in prices as between purchasers in different localities unless justified by costs of production or transportation or other marketing circumstances, and (5) exclusive sales injurious to the public. The law specifically prohibits concentration or control in the marketing of articles of "prime necessity" for the purpose or with the effect of increasing prices, and provides that such articles may be imported free or their exportation prohibited when necessary. In case of shortage the Government may force the sale of such articles at fixed prices.

The Federal Government may authorize the combination of producers or merchants for developing production, preventing ruinous or unfair competition, eliminating middlemen in order to lower prices, obtaining better distribution, exporting surplus production, or obtaining technical improvement to benefit national production. But such combines may not unduly raise prices, and they must agree to permit the Government to fix their prices and direct their activities.

The law lists certain articles as "articles of prime necessity" and prohibits their use for purposes different from those for which they are normally destined, unless there is a surplus (i. e., cereals may not be used for making alcohol).

When the Minister of Industry, Commerce, and Labor decides that there is a scarcity of these articles of necessity, he may force everyone having stock on hand to place it on sale without restriction, at retail, at a price not exceeding the average for the previous 6 months. Warehouses must report monthly the stocks of necessities they hold, as must producers and merchants.

A decree issued on December 19, 1931, gives regulations in connection with the organic law. It provides for price-fixing boards to function in case of shortages of prime necessities. Representatives of the Federal Government, the municipality, chambers of commerce, and the leading labor organization will serve on these boards. They will determine maximum prices, insure that vendors adhere to those prices, discover concealed stocks, and impose penalties, which may be reviewed by the Department of Industry, Commerce, and Labor.

Prices are considered exorbitant when they advance with no corresponding increase in costs or taxes, or when they fail to decline in proportion to a decline in costs or taxes. It is presumed that a combination exists when there is concerted limitation of production or sale. Such concerted action is not unlawful if it is due to excessive stocks, which render production unprofitable; to plans for improvement of production, service, etc., without prejudice to the consumer; or to partial or total lack of any element of production (presumably including labor).

Giving of vouchers, coupons, etc., is hedged about with several restrictions. There may be no discrimination; they may be issued only in the name of the person (or company) who gives them away; and they may not consist of collections in series.

Other prohibitions include dissemination of false information regarding production to influence prices; willful destruction of products without consent of the Government; abandonment of farms or suspension of operations in factories without Government consent or without justifiable cause; restriction or suspension of sales to retailers.

The Federal Marketing Act, 1932, placed the production and transportation of winter vegetable crops on the west coast of Mexico under Government control. Farm products on the coast were classified as "public utilities."⁶

The Mexican Penal Code of 1931, title 14, chapter 1, provides penalties for offenses against commerce and industry similar to those outlined above.

A new organic law relative to monopolies, dated August 24, 1934, supplants the organic law of August 22, 1931. The Government participates or intervenes to fix prices, on the assumption that such monopolies are for the public good. Public utilities are in the latter category. Monopolies and "acts tending toward monopoly" are defined approximately as in the old law.⁷

A law dated July 17, 1934 (*Diario Oficial*, July 23, 1934), modified articles 12 and 16 of the Monopolies Act of 1931, by placing petroleum oil products in the classification of "articles of prime necessity."⁸

BENEVOLENT MONOPOLIES

In general, the 1931 and 1934 monopoly laws recognized the existence of "benevolent monopolies," where maximum prices are established by the Government and the public does not suffer.

Azucar, S. A., a corporation, controls the production, distribution, and exportation of sugar. It was organized in 1932, under Government supervision, taking in three producers' associations representing 78 producers. It is the sole distributing and marketing agency for the industry, regulates production, and disposes of surpluses on world markets. It extends credit to its producer-shareholders and buys their production. Since it controls prices, it can make liberal advances. Exports are subsidized with a fund made up from the difference between domestic buying and selling prices. In 1934 it exported somewhat too freely and had to import 10,000 tons to prevent a spectacular price increase.

It is a "good monopoly" because it is an organization of producers, the Government participates in its price fixing, and its operations result in increased wages, greater stability of the industry, and maintenance of prices at fair levels. It is granted a rebate of 5 centavos from the 6 centavo per kilo sugar tax, despite the constitutional prohibition of discriminatory tax rebates. The exception is apparently justified by article 13 of the organic law of 1934, stating that subsidies granted to associations or cooperative organizations are not considered as tax rebates.

⁶ Bureau of Foreign and Domestic Commerce, Commerce Reports, December 24, 1932, p. 201.

⁷ World Economic Review, 1934, U. S. Department of Commerce, p. 263.

⁸ Bureau of Foreign and Domestic Commerce, Commerce Reports, September 8, 1934.

THE SIX YEAR PLAN

The Mexican Revolutionary Party at its convention in Queretaro on December 3-6, 1933, adopted a plan of social and economic development to be carried out during a 6-year period, starting in 1934. The plan is divided into the following topics: (1) The agrarian problem, (2) labor legislation, (3) national economy, (4) communications and public works, (5) public health and education, (6) government, (7) finance and public credit, (8) foreign relations, (9) Federal District, (10) public works in the communities.⁹

The Six Year Plan created a National Economic Council, made up of representatives of employers, employees, consumers, and Government economists, to formulate plans for controlling operations of commerce, industry, and export trade, and for promoting and aiding those activities. The National Economic Council is made up of representatives of local economic councils, the National Agricultural Council, industries, public utilities, merchants, banks, labor, consumers, and professions, with 10 economists appointed by various ministries. It has a permanent organization composed of the permanent secretaries elected by each group within the council, and the 10 Government economists.

THE AGRARIAN PROGRAM OF THE SIX YEAR PLAN

Although the major part (about 85 percent) of Mexico's income in recent years has been derived from mines, oil fields, and factories, the 1930 census indicated that 70.2 percent of the economically active population was still engaged in agriculture.¹⁰

The economic and social conditions of the rural population, brought about by the land tenure system, were a basic cause of the revolution of 1910. The major aims of the revolutionary governments were to improve the economic and social conditions of the rural population and to increase the total national production of agricultural products.¹¹

Article 27 of the 1917 Constitution is the legal foundation of all land legislation. It includes the following principles:¹² The state has the right to intervene constantly in the distribution of public wealth, especially in the distribution of land. The villages always have the right to be given land which they need for their subsistence. Those lands will be taken from the large neighboring properties. The small holding, which is considered a useful institution of the country, will be respected in every case. The latifundia (large estate) must be broken up, with the object of creating and strengthening the small holding. The only forms of property which have legal recognition within article 27 of the Constitution are, consequently, the small holding and the ejido.¹³

⁹ Bureau of Foreign and Domestic Commerce General Legal Bulletin No. 81, Division of Commercial Laws.

¹⁰ Charles H. Barber, *The Land Problem in Mexico*, Foreign Agriculture, Foreign Agricultural Service, March 1939, p. 99.

¹¹ *Idem*.

¹² Lucio Mendizeta y Nunez, *The Balance of Agrarian Reform*, The Annals of the American Academy of Political and Social Science, 1940, p. 126.

¹³ The ejido is held by the village and not by the individual, and the land is inalienable. The fertile portion is divided into small holdings of approximately equal size which are assigned by lot to the heads of families. These are called ejidatarios. The ejidatario can hold his plot for life and bequeath it to his heirs but he loses his right if he fails to farm the land 2 years in succession. Nor can he mortgage, rent, or transfer the holding in any way (Foreign Policy Reports, August 15, 1937).

President Cardenas found upon taking office that his predecessors had made only a start in carrying out the agrarian reform, and was determined to speed up the process. From 1915 to November 1934, 10,391,273 hectares were assigned to 942,335 heads of peasant families; under the Cardenas regime, from December 1934 to August 1939, 18,511,237 hectares were assigned to 1,097,579 heads of families.¹⁴ The figures in themselves, however, do not tell the whole story. Due to differences in opinion and political influence, many irregularities occurred in the course of carrying out the agrarian reform. Many ejidos were of such poor quality and so small that they offered no solution. To correct such defects, the Agrarian Code now in force stipulates that in no case is the ejido parcel to be less than 4 hectares in irrigated lands, and every settlement of ejidos is to be carried out with the best lands of the haciendas. Unfortunately, however, the code does not affect the ejidos established under former laws.

From the beginning of the agrarian reform large agricultural units, like those in the Laguna district, were spared from partitioning, as it was believed that expensive irrigation works required by such areas made large scale exploitation inevitable. But in August 1936 the farmers on 104 plantations went on strike demanding higher wages, better living conditions, recognition of their unions, and other benefits.¹⁵ Their action prompted President Cardenas to distribute land in the area, and in a decree of October 6, 1936, applicable to the Laguna region alone, he undertook to carry out his promise. In the Laguna district the cotton-growing haciendas were put in the hands of the peasants without destroying the unity of the development. These haciendas continue as a single unit, but for the benefit of the peasants, who are organized into cooperative societies. The same procedure has been followed in the hennequin region of the State of Yucatan. Observers of the Laguna experiment are of the opinion that it is too early to judge the results achieved since 1936. Those ejidos which received good land are flourishing, while ejidos on poor quality land are precarious.

In summing up the balance of the agrarian reform the following conclusion is reached by a student of the Mexican agrarian problem:¹⁶

The agrarian reform in Mexico is more than 20 years old in its development, but it has not yet reached its complete realization either in the aspect of the redistribution of the land or in that of the organization of the ejido, and still less in that of the organization of agrarian credit. * * * One could not expect the ejido, in so short a period of time, to accomplish what the large holding did not accomplish in the Mexican Republic during several centuries of existence. In fact, the large holding in Mexico was never able to satisfy the population's demand for articles of prime necessity, since it was always necessary to import cereals from other countries. From the social point of view, the large holding was a real scourge of the peasant population, which it iniquitously exploited to the point of reducing it to an indefensible condition of misery.

On the other hand, the ejido, which is the basis of the new agrarian organization of Mexico, rests upon indubitable principles of justice and corresponds to inevitable social needs. By means of the ejido, the attempt is made to bring to each of the peasant families of Mexico, dispossessed of all property, a small parcel of land (4 hectares in irrigated land, or a larger area of equivalent productivity in lands of another quality) in order that such families may be able to take care of the most urgent needs of their material life.

¹⁴ Mendieta y Nunez, *op. cit.*, p. 127.

¹⁵ Charles A. Thompson, Mexico's Challenge to Foreign Capital, Foreign Policy Reports, August 15, 1937, p. 125.

¹⁶ Mendieta y Nunez, *op. cit.*, pp. 130, 131.

* * * At the present time it is known that the development of the redistributed lands, characteristic of the ejido, is not satisfactory from either the economic or the social point of view. From the economic point of view, the results are poor because neither the methods nor the mechanized means of modern agriculture can be employed in each parcel, considered singly. The tenant of the ejido confines himself to obtaining the agricultural products indispensable for his own consumption, employing for the purpose a rudimentary agricultural technique. From the social point of view, the development isolates the tenant of the ejido, incloses him within an egoistic individualism which removes him from every common interest * * *

The solution which is necessary is the collective development of the ejido, the restitution of the old latifundium; but with the difference that it would now be in the hands of and for the advantage of the workers themselves, and would have the benefit of modern direction and technique. Economically, the advantage of collective cultivation is not open to question, for it would furnish the tenant of the ejido the possibility of using machinery and tools, which would introduce great savings in the development. Socially, collective development is a solid bond of union which creates the class consciousness and the political strength so necessary to the destitute masses of the Mexican countryside, who consist for the most part of Indians of different race and different culture.

According to a study of the United States Department of Agriculture,¹⁷ early effects of the land reform show a reduction in total agricultural production in Mexico, at least for the time being. This may be attributed to the state of uncertainty on the part of land-owners, brought about by continuous expropriation. Land-owners are not willing to make improvements or new investments in land and equipment so long as they are still subject to expropriation. Other facts cited by authorities as explaining failure of production to meet domestic requirements for the basic food crops are (1) further impoverishment of the soil by lack of soil-conserving practices; (2) increased consumption on the part of the working classes; and (3) migration of farm labor to other occupations.

Reduced production on the part of the communal farms may be attributed to two principal factors, which eventually may be overcome—(1) lack of sufficient Government credit for the necessary equipment and supplies, and (2) inefficiency on the part of a large number of laborers due to lack of the close supervision and technical planning to which they were formerly accustomed.¹⁸

AGRICULTURAL CREDIT

An important provision of the 6-year plan was the granting of agricultural credit for the ejidos (village communal lands) and the small farmers. The National Bank of Agricultural Credit, set up originally in 1926, catering mostly to large landholders, and was reorganized in 1931 and again in 1934, providing loans for the ejidatarios and small farmers. These loans were to be granted by the local cooperative societies, as credit operations with individuals were prohibited.¹⁹

At the end of 1935 a separate bank was established for the ejidatarios, the National Bank of Ejido Credit. Since its establishment the bank granted loans to the ejidos societies for living expenses, seeds, animals, implements, lands, buildings, etc. Ultimately, through the purchase of stock in the National Bank of Ejido Credit by the local

¹⁷ Foreign Agriculture, op. cit., pp. 119, 120.

¹⁸ Foreign Agriculture, op. cit., March 1939, pp. 119, 120.

¹⁹ Foreign Policy Reports, op. cit., August 15, 1937, p. 127

credit societies, it is expected that the ejidatarios will own the bank in 25 years.²⁰

RECENT MEASURES TO CONTROL ECONOMIC ACTIVITIES

A presidential decree effective June 25, 1937, established governmental control over production, distribution, and prices of both agricultural and industrial products. All producers of agricultural and industrial goods declared by the Ministry of National Economy to be of fundamental importance to the national economy, were required to form State producers' associations, to which they must turn over their entire production for sale. The State producers' associations are affiliated into national producers' unions, which will be in charge of distribution in accordance with domestic demand and export requirements. The national producers' unions will have representatives of Government banks on their boards of directors and will be in a position to borrow from those banks to make advances to producers.

The task of these associations is to stimulate production, to fix prices, assure orderly marketing of all those articles which affect in a fundamental manner the economy of the country. Members must limit their production to annual quotas fixed by the State associations, which must send monthly reports to the national union of stocks on hand and probable consumption. The national unions may authorize State associations to effect direct sales.²¹ The application of this measure is expected to be gradual.

The decree of June 8, 1937, published in the *Diario Oficial* of June 21, 1937, provides for the Government's control over the silk and artificial silk knitting and weaving industries. Owing to the heavy over-production in the artificial silk industries conditions in these industries became so acute that many small operators were unable to meet their pay roll. To place the industry on a more sound plane and to protect labor the Government decided to regulate the imports of silk and artificial silk yarn as well as the installation of productive machinery.²² The decree required all knitting and weaving mills making any product containing as much as 25 percent silk or artificial silk, to report to the Secretary of National Economy the number of looms and knitting machines in their plants, the amount of yarn used, amount of production, stocks, sales, salaries and wages paid, number of shifts, and hours per shift. This report is required monthly. Plants may not be operated without authorization by the Secretary of National Economy, which will indicate the number of looms and knitting machines which may be operated. The decree also prohibited imports into Mexico, except under license, of silk rayon, yarn, or thread, and machinery for weaving and knitting silk and rayon.

On June 28, 1937, a concession was granted for the establishment of a National Foreign Trade Bank, the Federal Government furnishing most of the paid-in capital. In July 1937 the National Labor Bank for Industrial Promotion was established to finance cooperative workers in the operation of industrial enterprises. In January 1938, when the Government expropriated the Atlas Fiber Manufacturing

²⁰ *Ibid.*, p. 126.

²¹ Bureau of Foreign and Domestic Commerce, *Comparative Law Series*, July 1937, p. 24.

²² Bureau of Foreign and Domestic Commerce, *Commerce Reports*, July 10, 1937, pp. 544, 545.

plant in San Luis Potosi, it was announced that the National Labor Workers' Bank would finance the workers in the operation of the place.²³

Plans were made for closer control of exports through the National Foreign Trade Commission and the Export Bank. It was proposed to form associations of exporters in each branch of export trade, with representatives of each association in a central institute, and sales agencies abroad.

During the latter part of 1937 intensive efforts were made under the personal direction of General Cardenas to break up the hennequin plantations and the National Ejido Bank was charged with financing production on a collective basis. As this arrangement proved expensive for the Federal Treasury, a new State-controlled Hennequin Producers' Association was established in April 1938 and early in 1939 several large hennequin plantations, including buildings and equipment, were expropriated.²⁴

A decree of August 14, 1937, reorganized the Federal Electric Commission so as to make it a strictly Federal dependency. The committee was given authority to organize and administer a national system of electric generation, transmission, and distribution, and was granted preferential rights to water power over private interests.²⁵

The Federal Government has created a National Commission for Foreign Trade. The Commission has the duty of assisting in the organization of Mexican export, the preparation of trade agreements, the control of export goods quality. Further aims of this national organization are clearly shown by the creation of the Importers and Exporters of Rayon. This company will be the only one to receive a subsidy of 2.90 pesos per kilo of imported material. Every textile enterprise will receive the same subsidy when it becomes a member. Importers must commit themselves to sell this rayon only to firms which the central organization will indicate. In the same way there are formed production groups, the members of which will receive instructions from the Secretary of National Economy with respect to their maximum production. The members of these production groups may not sell these products individually, but must leave the sales to the central organization. Manufacturers will only get subsidies or other Government support when they trade through the national organization of which they are a member.²⁶

PRICE FIXING

A decree which appeared in the *Diario Oficial* of February 1, 1936, gives the conditions under which organizations desiring to fix prices may be authorized by the Secretary of National Economy as follows:

1. To obtain a technical improvement in production or distribution of goods (or services), or lower prices.
2. Unification of an industry, which may result in reduced prices.
3. Elimination of intermediaries, to obtain lower costs of production and distribution and lower prices.
4. To regulate production, distribution, and consumption, without unjustified price increases.

²³ Bureau of Foreign and Domestic Commerce, *Economic Review of Foreign Countries*, 1938, p. 201.

²⁴ Bureau of Foreign and Domestic Commerce, *Economic Review of Foreign Countries*, 1933, p. 201.

²⁵ *Ibid.*, p. 175.

²⁶ Bulletin "Panamecs," Weekly Bulletin of the Pan-American Economic News, Inc., February 21, 1939, p. 6.

5. Elimination of ruinous or unjust competition without unjustified advance in prices.

6. Establishment of a new industry.

7. Preservation of commercial and industrial activities or services which are beneficial and necessary for the general good and which have a tendency to disappear because of economic conditions.

8. Establishment of rules of classification or quality, or a code of commercial ethics.

9. Exportation of products without injury to domestic consumers.

10. Other activities which, because of their nature, may show that the possibility of fixing prices will not be exercised against the best interest of the public.

Regardless of the purpose of the organization, the Secretary of National Economy may issue an authorization if he retains the power to determine maximum prices. He also has the right to approve or disapprove the compensations of directors and administrators of such associations and to make recommendations regarding administrative expenses. If he believes an organization is beneficial to the economic structure, he may grant subsidies and privileges. The organization must report semi-annually to the Secretary of National Economy, setting forth accomplishments, prices, production costs, average expenditures, etc.

Relying on the authority granted by article 28 of the constitution and the various regulatory laws and decrees, notably article 7 of the organic law of 1934,²⁷ the Government has extended its price-fixing activities. Various foodstuffs, medicines, gasoline, charcoal, electricity, etc., listed as prime necessities, have been covered by decrees fixing maximum prices. The retail price of gasoline was reduced 2 centavos a liter by a decree dated September 16, 1935, for example. Sale of vegetable charcoal was decreed to be "clothed with public interest" by an executive decree of July 21, 1937, and wholesale and retail prices were fixed. It is provided in the decree that where dealers fail to supply charcoal at the price fixed, the Department of the Federal District shall enter the trade and supply it at a lawful price. (The decree is limited to the Federal District.)

A decree published August 12, 1938, provided for a Regulatory Committee for the Control of Commodities, and further regulation of the supply, distribution, and prices of the necessities of life. Departments will be formed to regulate customs tariffs, taxes, subsidies, transportation, crop credits, clearing houses, produce exchanges, and other factors bearing on the price of food. When necessary, the committee may buy, sell, and store commodities in order to regulate the price.²⁸

Under a decree of October 4, 1938, the Government may fix the maximum price at which sales shall be made to consumers in the country. There are also production groups formed under the Ministry of National Economy, which are subject to instruction as to their production plans and must sell through a central organization. The

²⁷ Art. 7 provides that when a monopoly exists, or any situation which may permit one or more persons to fix prices or quotas, to the detriment of the public or any social class, the Federal executive may fix maximum prices, force those having stocks to place them on the market at fixed maximum prices, or promote the establishment of new competitive industries, through subsidies, or in any other way. These actions will be taken after consultation with the National Economic Council. Article 8 permits the executive to take the actions mentioned without consulting the National Economic Council, if articles of necessity are involved.

²⁸ Trust Laws and Unfair Competition in Foreign Countries, Annual Report of the Federal Trade Commission, 1939, p. 158.

National Commission for Foreign Trade has been directed to assist in the organization of exports, preparation of trade agreements, and control of the quality of goods exported.²⁹

NATIONALIZATION

RAILWAYS

On November 23, 1936, President Cardenas signed the expropriation law,³⁰ which authorized seizure of private property not merely for reasons of "public utility" but also on the broader ground of the "public and social welfare." Acting under this law the President announced on June 23, 1937, expropriation of the National Railways of Mexico. Two important lines remained under private ownership and control. For some time the Government has held 99 percent of the common stock of the National Railways, 35 percent of the first preferred stock and 25 percent of the second preferred stock. Of the bonded debt, whose principal totaled some \$240,000,000, about 50 percent was owned by British interests and about 16 percent by United States holders. Compensation was promised to the security holders, after an evaluation of the properties had been made.³¹ The Labor Administration created by the law of April 1938 is in full control of the National Railways, with the exception of certain supervisory powers granted to the Ministries of Communications and Treasury. In the case of the Ministry of the Treasury, that department has the authority to inspect the income and expenditures of the National Railways in order to determine whether expenditures have been made in accordance with the law, and that the income is sufficient to meet expenditures.

OIL INDUSTRY

The Government has also moved toward nationalization of the oil industry. The struggle for the oil industry owned and controlled by the foreign companies, dates back to article 27 of the 1917 constitution, which declares petroleum resources to be the property of the nation.³² The statement of article 27 that "Private property shall not be expropriated except for reasons of public utility and by means of indemnification," led to a long controversy with the United States which ended in 1927, when a compromise was reached between President Calles and Ambassador Dwight Morrow. As the outcome of this agreement the Mexican Government recognized oil rights acquired before the 1917 constitution went into effect, and issued to the owners "confirmatory concessions" of a permanent character. The aim of the Government, however, remained the expropriation of the oil properties. A Presidential decree of January 30, 1937, established a Government agency entitled the General Administration of National Petroleum to exploit lands of the petroleum reserve, to promote the development of the petroleum industry, to regulate the internal market, etc.

²⁹ *Ibid.*, p. 10.

³⁰ *Diario Oficial*, Nov. 25, 1936.

³¹ *Foreign Policy Reports*, Aug. 15, 1937, p. 130.

³² This account of the petroleum controversy between Mexico and the United States is based on *Foreign Policy Reports*, Charles A. Thompson. The Mexican Oil Disputes, Aug. 15, 1938.

The direct cause leading to expropriation was the labor controversy between the Syndicate of Petroleum Workers and the foreign companies. On November 3 the syndicate submitted a collective contract to all the companies in the industry. According to the representatives of labor, the increase they asked for meant an increase of 133 percent over the amount paid in November 1936, while according to the companies it amounted to 500 percent. A joint conference was held at Mexico City in early December 1936 to find a satisfactory solution. When the period allowed for the conference ended without an agreement, the syndicate called a strike on May 27, 1937, which brought the oil industry to a standstill. The companies then offered concessions, which the union first refused; at the suggestion of Cardenas, however, they finally agreed to call off the strike and moved on June 7 to present the issue to the Labor Board.

A commission of experts was organized which presented its report to the Labor Board on August 3, 1937. Following the presentation of the experts' report, special group 7 of the Labor Board held hearings, and on December 18 it handed down its award,³³ against which the companies filed a petition for amparo or injunction with the Mexican Supreme Court, against the findings of the Labor Board. When the supreme court in its decision of March 1 denied the injunction requested by the oil companies and supported the findings of the Labor Board, the companies declared their inability to comply. They argued that the policy of the Government was biased and that the change effected early in the Cardenas administration fixing the terms of the justices at 6 years instead of life was a factor in securing cooperation from the court. On March 14 the Labor Board warned the companies to accept the findings by the following day, but the companies advised the Board that they were unable to comply. On March 18 the Board granted the unions' demand to end the labor contract between the companies and the union, in consequence of which union leaders ordered work in the oil fields suspended at midnight of the same day. That evening President Cardenas issued his decree expropriating the properties of 17 British and American companies, representing chiefly the Royal Dutch-Shell, Standard Oil, and Sinclair groups. In the oil decree the properties of the 17 companies were declared expropriated for public utility.

Mexico acknowledged its responsibility for adequate compensation, but maintained that the amount and manner of payment should be determined in connection with its capacity to pay and in accordance with its own laws. It also pointed out that far-reaching social

³³ Following presentation of the experts' report, special group 7 of the Labor Board held hearings, and on December 18 handed down an award which followed substantially the findings of the experts. Increases in wages and welfare benefits totaling 26,329,393 pesos were recommended. The award provided for a 40-hour week with pay for 56 hours; vacations of 21-30 working days, in addition to 16 other holidays on full pay; double pay for all overtime, and triple pay for work on holidays and rest days; retirement pensions available at the age of 55; indemnification for accidents and illness, both vocational and nonvocational. The companies were to furnish housing facilities, and were also required to provide free medical, surgical, dental, laboratory, and hospitalization services, both for employees and for members of their families, in any case of illness or injury; and (with limited exceptions) regardless of cause. They were to contribute an amount equivalent to one-tenth of their annual wage bill toward a savings fund for the workers; and in addition were to pay one-half the premium on life insurance policies of 4,000 pesos for each permanent employee.

The award also placed limitations on the companies' control of personnel. Promotions were to be based on seniority. No reduction in personnel or no discharge could be effected without consulting the union; but the companies were obliged by the so-called "exclusion clause" to discharge any worker expelled by the union. If workers had to be laid off, nonunion individuals were to be let out first. But what most aroused company opposition was the provision affecting so-called "confidential employees" (executives and persons in other positions of trust and responsibility), which markedly limited their number. Positions such as managers of refineries and of production, traffic, credit and transportation departments, cashiers, and paymasters were to be filled by union members, who were also to be entitled to occupy half the positions in the legal departments. Foreign Policy Reports, op. cit., Aug. 15, 1938, p. 124.

changes can hardly be accomplished without confiscatory measures, and denied that foreigners could be given a "privileged situation" as opposed to nationals.

In summing up Mexico's experience with expropriation it may be said that the Cardenas regime succeeded in establishing a reasonably efficient administration of the oil industry. A Council for Petroleum Administration has run the industry; three posts were allotted to union representatives. But labor in the oil industry had been compelled, at least temporarily, to forego the benefits granted in the Labor Board—

the country's economy was dealt a heavy blow; business confidence received a disquieting shock; the value of the peso dropped from 20 to 25 percent; * * * the Government incurred a serious cut in revenue, resulting specifically from the decline in oil taxes, and generally from the deepened depression. Moreover, the expropriation move promised to have significant long-term consequences. Of Mexico's four major petroleum districts—Panuco (north of Tampico), "The Golden Lane" (south of Tampico), Poza Rica (south of Tuxpam), and the Isthmus of Tehuantepec, three show declining production. Only Poza Rica, to which may be added the "El Plan" field on the Isthmus, is in full development. For about 10 years the Government has generally refused new concessions for exploration to foreign companies. Unless Mexico can insure provision of the sums necessary for the drilling and development of existing fields or the eventual exploitation of new ones, it faces an early curtailment in production.³⁴

EXPROPRIATION OF AGRICULTURAL LANDS

The agrarian reform led to considerable difficulties on an international scale.

Agrarian expropriation began in Mexico in 1915. Before that time, foreigners owned about one-fifth of the private lands of Mexico; of these, Americans held about 50 percent.³⁵ Up to August 30, 1927, 161 moderate sized properties of American citizens had been taken. The claims arising therefrom were referred, after much discussion, to the General Claims Commission established by agreement between the Mexican and United States Governments in 1924.³⁶

Land expropriation during the Cardenas administration has affected properties of United States citizens in the Territory of Lower California, the Laguna, the State of Puebla, and other areas. The legal basis for land expropriation, like oil expropriation, is article 27 of the 1917 constitution, which stipulates that "the ownership of lands and waters comprised within the limits of the national territory is vested originally in the Nation." Also, the State was declared to "have at all times the right to impose on private property such limitations as the public interest may demand. * * * For this purpose necessary measures shall be taken to divide large landed estates; to develop small landed holdings; to establish new centers of rural population with such lands and waters as may be indispensable to them." The same article also provided that compensation for expropriated property was to be given on the basis of the declared value of the property for taxation, plus 10 percent. Landowners were offered payment in 20-year 5-percent bonds.

After a lengthy exchange of notes, the agrarian controversy was largely settled when, on November 9-12, 1938, the Mexican and United States Governments exchanged communications agreeing

³⁴ Foreign Policy Reports, Aug. 15, 1938, pp. 131, 132.

³⁵ Frank Tannenbaum, *The Mexican Agrarian Revolution*, Macmillan, 1929, ch. XV.

³⁶ Compensation for American-owned lands. Department of State, Publication 1288, pp. 3, 4.

upon a satisfactory procedure for the determination of the fair compensation to be given American citizens whose lands have been taken subsequent to August 30, 1927, and in consequence of which agreement the Mexican Government will provide compensation in cash for such properties.³⁷

MINERAL PROPERTIES

A further step in nationalization has been accomplished by reserving petroleum and mineral properties throughout the country, where not already alienated. Two states have been declared national reserves for coal and iron, and salt reserves have been legalized in many states. All deposits of potassium salts and phosphate rock not covered by concessions were incorporated into the national reserves in August 1938, looking toward an eventual government monopoly of production and distribution of fertilizer.³⁸

Mexico finds itself in a difficult situation. Without the cooperation of foreign capital the immediate funds needed to carry out the social program on which the country has embarked cannot be secured. On the other hand, if foreign capital is to be attracted it must be given more assurance of stability and security than it has received in the past; such assurances, however, are incompatible with the tenets of the revolutionary program. A way out of this dilemma may be found by giving better treatment to foreign investments that are already in Mexico, and finding a new formula for future investments acceptable to Mexicans as well as to foreign investors—such as granting Mexicans participation in operating companies which would have as their ultimate objective the final acquisition by Latin Americans of the property being developed by foreigners.

³⁷ Press Release, Department of State, No. 1327, Aug. 14, 1939.

³⁸ Trust Laws and Unfair Competition in Foreign Countries, Annual Report of the Federal Trade Commission, 1939, p. 159.

PART VIII

CONCLUSIONS REGARDING LATIN AMERICA

by

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Temporary National Economic Committee

CONCLUSIONS REGARDING LATIN AMERICA

Exports from most Latin American republics consist chiefly of one or two outstanding products, foodstuffs and raw materials, the prices of which are subject to wide fluctuations. The rise and fall of these prices has severely dislocated the economic structure of the Latin American countries at various times, as during the past decade, when the economic crisis was followed by social unrest, revolutions, and continuous political instability. Thus Latin Americans could not help realizing that "to have the whole fabric of civilization and the alternative between peace or war depend upon the price of coffee or nitrates or beefsteak or linseed oil or wool or petroleum is indeed a terrible situation to contemplate."¹ To alter this situation most countries have endeavored to diversify their economy by developing a larger range of export products and by trying to speed up the process of industrialization.

The upshot was the most recent shift in the South American position. Having been mined for three centuries and milked for one, the republics, particularly the more advanced republics of Brazil, Argentina, and Chile, determined to do a bit of the mining and milking themselves. Beginning early in the thirties with currencies generally devalued, economic nationalism became orthodox south of Panama. Tariffs went up. Subsidies went in, and the principal South American republics began to change with disconcerting rapidity from countries everybody used and nobody thought about to countries everybody thought about and fewer and fewer could use.²

In addition to the desire of placing their foreign trade on a broader basis, other factors have been responsible for the emphasis on industrialization in recent years. There has been a general realization that industrialization will end class stratification and will help to build up a middle class, politically articulate and capable of sharing political responsibility. The effort to increase the purchasing power of the population has been another reason for the acceleration of the drive toward industrialization. The protective tariff policies and government subsidies adopted by most Latin American countries from the earliest periods of their independence is an indication that the idea of government aid for manufacturing is not new in these countries. In recent years, however, protection has been reinforced by exchange controls and other methods.

Industrialization and diversification, however, provide only one reason for the increasing interest of Latin American leaders in the economic activities of their countries. Nationalistic sentiment, expressing itself in resentment toward foreign enterprises, has been another factor. To what extent this resentment has actually reflected the average Latin American attitude toward foreign capital, and to what extent it has been whipped up for the purpose of fomenting what has been called socio-economic-nationalistic revolutions is impossible

¹ Economic Relations with Latin America, Michigan Business Papers, No. 6, University of Michigan, January 1940, p. 35.

² Fortune Magazine, December 1937, pp. 104-5.

to ascertain. But it is probably true that many Latin Americans feel that most foreign enterprises, and particularly the extractive industries, have never quite become a part of the country. They resent foreign companies leaving only wages and taxes in the country; they feel that profits derived from the exploitation of natural resources are but seldom reinvested in the country from which they were derived, and that foreign companies form a state within the state, and are apt to influence national and international affairs. Even if some of the accusations are no longer true, their former truth still influences the mental reactions of Latin Americans. This aversion toward foreign enterprise has led certain leaders to contemplate the possibility of adopting the role of the foreign or native entrepreneur. They feel capable of tapping the unused productive capacity of their country and feel sure that a strong government could induce the native capitalists to invest their surplus funds in domestic industrial enterprises. They feel that they need only a strong central government which would command the confidence of the community at large or, if necessary, could impose its will on the people. Most of them recognize the great difficulties which would confront them in the absence of foreign capital. The general trend is nonetheless in the direction of authoritarian governments experimenting with various ways to build up a better-balanced economy. As far as the future position of foreign enterprises is concerned, in face of the continued threat of nationalization, their further expansion probably will be possible only if they are satisfied with limited returns and are willing to accept citizens of Latin American countries in enterprises they wish to develop.

What can the United States do to help the Latin American republics to build up a better-balanced economic system? The greatest need of the Latin American countries is financial assistance, provided its objective is the carrying out of a sound investment program. The objectives of financial assistance should include the production of raw materials needed in the Western Hemisphere, e. g., rubber. Also, consideration should be given to the encouragement of the manufacture of industrial goods needed in Latin America, and in which Latin American raw material can be used, but which are ordinarily imported. The development of light manufacturing, while it would give impetus to growing trade between the Latin American countries, would have to be accompanied by developing better communication services than are in existence at the present time; capital for building railroads and roads will also have to come from abroad. Much has been made of the possibility of developing in Latin America the manufacture of products which United States department store buyers formerly imported from Europe and Asia. Handicraft goods specialties fall into this category. In the past limited quantity, lack of sales organizations, etc., have generally prevented the realization of such a program, but, given financial and technical assistance, the difficulties could be overcome.

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